farmers could sell it by retail to the thousands of people who would use it, and this would help destroy the trust, and it would force the trust to pay the farmer a living price for his tobacco.

There is nothing that grows out of the ground, except tobacco, upon which there is a direct tax. The planter who raises cotton, as my friend on my right [Mr. McLAURIN] and his constituents do in Mississippi, pick their cotton, gin it, and sell it without paying a tax. The farmer can raise his wheat, harvest it, send it to the mill, get his flour, and sell it, and there is no tax. The hemp grower can produce his hemp, gather it, and sell it without any tax; but when it comes to tobacco, the planter has to pay a burdensome tax.

Mr. President, the bill to repeal the 6-cent tax on leaf tobacco was written by the Commissioner of Internal Revenue, Hon. John W. Yerkes. It was sent to the House of Representatives, where it was introduced and referred to the Committee on Ways and Means. That committee, through one of its members, Mr. DALZELL, reported it unanimously, and it was unanimously passed by the House of Representatives. It was passed twice by the House of Representatives—in the Fifty-eighth Congress and again in the Fifty-ninth. Both times, of course, it came to the Senate and was referred to the Committee on Finance, but no action was taken.

Under existing law all leaf tobacco sold in quantities less than a hogshead is liable to a 6-cent tax per pound, except when sold by the producer. It was declared in that bill which passed the House of Representatives twice—

That unstemmed tobacco in the natural leaf and not manufactured or altered in any manner shall not be subject to any internal-revenue tax or charge of any kind whatsoever, and it shall be lawful for any person to buy and sell such unstemmed tobacco in the leaf without payment of tax of any kind.

There was no tax on leaf tobacco until a few years ago, and we who are advocating the repeal of the 6-cent tax on leaf tobacco are only asking to be relieved of a burdensome tax which for half a century was not imposed.

Mr. President, I felt that I wanted to say something in answer to what the Senator from New York [Mr. DEPEW] said with regard to Kentucky, and I desired also to explain briefly the bill to repeal the 6-cent tobacco tax.

I want to say in conclusion that the people of Kentucky want law and order as much as do the people of any State. They condemn and denounce the conduct of the Night Riders and the men who have burned tobacco warehouses, but at the same time the tobacco growers in Kentucky are entitled to justice, and the burdensome and unjust tax of 6 cents per pound on leaf tobacco should be repealed.

MATERIAL FOR CONSTRUCTION OF PANAMA CANAL.

Mr. FRYE. Mr. President, several Senators have expressed to me a wish that at this late hour in the day I should not ask to take up Senate joint resolution No. 40. I ask unanimous consent that when the Senator from North Carolina [Mr. SIMMONS] has completed his speech to-morrow the joint resolution be taken up for consideration and that a vote on it and all amendments be taken at some time during the afternoon.

The VICE-PRESIDENT. The Senator from Maine asks unanimous consent that the Senate resume the consideration of Senate joint resolution No. 40 at the conclusion of the speech of the Senator from North Carolina [Mr. SIMMONS] to-morrow and that the Senate vote upon the amendments pending and to be offered and upon the joint resolution before adjournment. Is there objection? The Chair hears none, and that order is made.

EXECUTIVE SESSION.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session, the doors were opened and (at 4 o'clock and 15 minutes p. m.) the Senate adjourned until to-morrow, Friday, March 13, 1908, at 12 o'clock meridian.

NOMINATION.

Executive nomination received by the Senate March 12, 1908.

REGISTER OF THE LAND OFFICE.

George D. Orner, of Enid, Okla., now receiver of public moneys at Alva, to be register of the land office at Woodward, Okla., when the Alva and Woodward offices are consolidated under Executive order of February 17, 1908, vice Dick T. Morgan, resigned.

WITHDRAWAL.

Executive nomination withdrawn from the Senate March 12, 1908.

Fred Slocum to be postmaster at Caro, in the State of Michigan.

CONFIRMATIONS.

Executive nominations confirmed by the Senate, March 12, 1908.

CONSUL-GENERAL.

Benjamin H. Ridgely, of Kentucky, to be consul-general of the United States of class 3 at Mexico, Mexico.

POSTMASTERS.

CALIFORNIA.

Minnie E. Chalmers to be postmaster at Niles, Alameda County, Cal.

COLORADO.

James L. Moorhead to be postmaster at Boulder, Boulder County, Colo.

FLORIDA.

George B. Patterson to be postmaster at Key West, Monroe County, Fla.

ILLINOIS.

William T. Thorp to be postmaster at Litchfield, Montgomery County, Ill.

LOUISIANA.

Stephen F. Steere to be postmaster at Shreveport, Caddo Parish, La.

MAINE.

Melville J. Allen to be postmaster at Cherryfield, Washington County, Me.

John Harkness to be postmaster at Rockport, Knox County, Me.

UTAH.

Lorenzo Anderson to be postmaster at Brigham, Boxelder County, Utah.

RIGHT OF CAPTURE IN NAVAL WAR.

The injunction of secrecy was removed March 12, 1908, from a convention signed by the delegates of the United States to the second international peace conference, held at The Hague from June 15 to October 18, 1907, relative to certain restrictions with regard to the exercise of the right of capture in naval war.

DISCHARGING PROJECTILES FROM BALLOONS.

The injunction of secrecy was removed March 12, 1908, from a declaration signed by the delegates of the United States to the second international peace conference, held at The Hague from June 15 to October 18, 1907, prohibiting the discharge of projectiles and explosives from balloons.

HOUSE OF REPRESENTATIVES.

THURSDAY, *March 12, 1908.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

SIDNEY BIEBER.

Mr. BARTHOLDT. Mr. Speaker, I ask unanimous consent to make a statement.

The SPEAKER. The gentleman from Missouri asks unanimous consent to make a statement. Is there objection?

Mr. MANN. How much time, Mr. Speaker?

Mr. BARTHOLDT. Five or ten minutes—make it ten minutes.

Mr. MANN. Then ask for ten minutes.

The SPEAKER. Is there objection?

There was no objection.

Mr. BARTHOLDT. Mr. Speaker, the Washington Post of yesterday contained an item, published with big headlines, in relation to a paragraph contained in the public-buildings act of March 2, 1907.

That paragraph authorized the War Department to convey to Sidney Bieber certain lowlands on the Anacostia River, in the District of Columbia, at a price to be fixed by the Secretary of War upon consideration of all the circumstances. From the press reports the inference might easily be drawn that the Committee on Public Buildings and Grounds had acted hastily in this matter. Therefore on behalf of said committee I desire to make a plain statement of facts, leaving it to the judgment of the House whether the legislation referred to was ill-considered.

In the spring of 1906 a bill introduced by the gentleman from Maine [Mr. ALLEN] was referred from the Committee on the District of Columbia to the Committee on Public Buildings and Grounds. During the preparation of the public-buildings act of that year that bill was taken up and considered. Mr. Bieber appeared before the full committee and stated that he had fallen heir to a piece of property in the location above stated, which, however, was worthless unless he was put in a position to purchase some adjoining tracts from the Government. He stated that these tracts were of no use to the Government and he was perfectly willing to pay the price which the War Department would deem proper under all the circumstances. Thereupon the committee referred the bill to the War Department, and in due time the bill was returned with its approval, and this explains the enactment of the first section to which reference is made.

In February, 1907, Mr. Bieber again appeared before the committee and asked for additional legislation which would enable him to purchase still another tract from the Government. In his statement before the subcommittee he made it plain that he had either to purchase more land or have the War Department authorized to repurchase that part which had been sold to him by the Government. He also stated that he had made an expenditure of money amounting to about $5,000, which would be absolutely lost unless he could secure this additional land. Since this contemplated a transaction exactly similar to the previous one the committee had every reason to believe that the War Department would approve it; hence the paragraph authorizing the sale was inserted. However, after the committee had passed upon the paragraph by unanimous vote I took the extra precaution of conferring with several members of the Committee on Appropriations who were more or less familiar with the location of these lands, and upon their suggestion the paragraph was altered in some minor details in order to still better safeguard the interests of the Government. No objection was heard from the War Department even after the passage of the bill by the House and no objection was raised in the other House when the bill was considered section by section.

While the members of the committee did not have time during the preparation of their large bill to visit the location of these lands, I was satisfied, and so were they, that since the whole matter was left to the War Department and even the price was to be fixed by that Department, the Congress would be on absolutely safe ground in enacting this legislation. We felt that the legislation authorized was nothing more or less than a legitimate sale of unused lands belonging to the Government and a legitimate purchase of them by a citizen on such terms as the agents of the Government themselves would deem proper. Though the terms of the paragraph not only authorized, but directed, the Secretary of War to sell and convey these lands, which, by the way, is the usual term employed in legislation of this character, it should be remembered that this still left the War Department full discretion for the reason that if from any cause the sale should be deemed inadvisable, the Department could place such a value and fix such a price upon the lands that the prospective purchaser would refuse to take advantage of the provision of law in question.

With these considerations in mind the committee had no misgiving whatever regarding the enactment of the legislation, and I was ready to defend it on the floor of the House.

This, I hope, will satisfy the Members of the House that the committee, of which I have the honor to be a member, has acted in perfect good faith in this matter and performed its duty in this particular instance to the best of its ability.

Mr. MANN. Will the gentleman yield for a question?

Mr. BARTHOLDT. Yes.

Mr. MANN. No one would believe that the gentleman or any member of his committee would be guilty of any fraudulent practice or be affected by any corrupt motive, but can the gentleman explain how his committee reports a bill for the sale of property over which his committee has no jurisdiction of the subject-matter whatever?

Mr. BARTHOLDT. Mr. Speaker, the only objection that was made is made to the second paragraph and not to the first. The first had the full approval of the War Department, and the second was simply a continuation of the legislation already had and in pursuance of the action of the proper authorities of this House, which referred the bill from the District Committee to the Committee on Public Buildings and Grounds for consideration.

Mr. MANN. It was a private bill. It may have been referred, for all that I know, by action of the House, but we all know how private bills are referred, and the ordinary reference of a private bill does not confer jurisdiction on the committee, and it ought not to assume jurisdiction when it knows that it has no jurisdiction of a private bill. The gentleman's committee would not think of authorizing the sale of land in Idaho because it has no jurisdiction. The gentleman would not think of his committee authorizing the sale of public lands anywhere else because it has no jurisdiction over it. But the gentleman brought in a bill which passes under the suspension of the rules practically by unanimous consent, and I think the gentleman's committee ought to be very careful about putting in provisions which the House can know nothing concerning and over which the committee has no jurisdiction.

Mr. BARTHOLDT. Mr. Speaker, I can assure my friend from Illinois that the Committee on Public Buildings and Grounds is not hunting bills. We have about 850 to deal with, and if we could be relieved to any extent, in accordance with the rules of the House, of any of the work devolving upon us, we should all be very happy.

Mr. MANN. I have not the slightest doubt about that, but Mr. Bieber, or someone representing him in this case, may have sought for a bill where he could get his item through without due consideration in the House. The gentleman understands that I intend no reflection upon his committee, which I do not think is to be blamed in the matter.

Mr. SULZER. I would like to ask the gentleman from Missouri what the status of the case is now? This is a peculiar matter and I wish to know what is going to be done about it.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed without amendment bills of the following titles:

H. R. 2915. An act for the relief of John P. Hunter;

H. R. 16073. An act to authorize the town of Edgecomb, Lincoln County, Me., to maintain a free bridge across the tide waters;

H. R. 14043. An act to provide for the extension of time within which homestead entrymen may establish their residence upon certain lands within the limits of the Huntley irrigation project, in the county of Yellowstone, in the State of Montana;

H. R. 16746. An act to authorize T. H. Friel or assigns to construct a dam across Mulberry Fork of the Black Warrior River;

H. R. 12803. An act allowing Chandler Bassett to perfect final proof in his homestead entry; and

H. R. 16749. An act to amend an act entitled "An act to authorize the construction of a bridge across the Monongahela River, in the State of Pennsylvania, by the Liberty Bridge Company, approved March 2, 1907.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House of Representatives was requested:

S. 2326. An act to provide for the purchase of a site for the erection of a custom-house and Federal court building thereon at Wilmington, N. C.; and

S. 3507. An act to fix fees and costs in the probate court of the District of Columbia, and to provide for the collection and payment of the same, and for other purposes.

The message also announced that the Senate had passed with amendments bills of the following titles, in which the concurrence of the House of Representatives was requested:

H. R. 17703. An act to repeal section 4885 of the Revised Statutes and to substitute another section therefor; and

H. R. 15653. An act to increase the pension of widows of deceased soldiers and sailors of the late civil war, the war with Mexico, the various Indian wars, and to grant a pension to certain widows of the deceased soldiers and sailors of the late civil war.

The message also announced that the Senate had agreed to the amendments of the House of Representatives to the bill (S. 1931) to grant certain land, part of the Fort Niobrara Military Reservation, Nebr., to the village of Valentine for a site for a reservoir or tank to hold water to supply the public of said village.

SENATE BILLS REFERRED.

Under clause 2, Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 2326. An act to provide for the purchase of a site for the erection of a custom-house and Federal court building thereon at Wilmington, N. C.—to the Committee on Public Buildings and Grounds.

S. 3507. An act to fix fees and costs in the probate court of the District of Columbia, and to provide for the collection and

payment of the same, and for other purposes—to the Committee on the District of Columbia.

PRINTING AND BINDING FOR COMMITTEE ON REFORM IN THE CIVIL SERVICE.

Mr. GILLETT. Mr. Speaker, I ask unanimous consent for the present consideration of the following resolution, which I send to the desk and ask to have read.

The Clerk read as follows:

Resolved, That the Committee on Reform in the Civil Service is hereby authorized during the Sixtieth Congress to have such printing and binding done as may be required in the transaction of its business.

The SPEAKER. Is there objection?

Mr. WILLIAMS. Mr. Speaker——

The SPEAKER. Does the gentleman yield?

Mr. GILLETT. Yes.

Mr. WILLIAMS. Before the gentleman takes his seat, what special call for activity is there upon the part of that committee at this session that will require printing and binding?

Mr. GILLETT. Mr. Speaker, the reason I introduced this resolution is that we have commenced the consideration of a bill reported by the so-called "Keep Commission" for the retirement of clerks to prevent superannuation in the service. In other words, the particular bill which we are considering now is what might be called a "compulsory savings bill," but it takes in the general subject of trying in some way to remedy the superannuation which is complained of. We have had several hearings upon it, and we wish to have them printed.

Mr. WILLIAMS. The gentleman expects to have hearings?

Mr. GILLETT. We have had hearings.

Mr. WILLIAMS. I have no objection.

The SPEAKER. The Chair hears no objection. The question is on the resolution.

The question was taken, and the resolution was agreed to.

POST-OFFICE APPROPRIATION BILL.

Mr. OVERSTREET. Mr. Speaker, I move the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18347, the post-office appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the post-office appropriation bill, with Mr. MANN in the chair.

The CHAIRMAN. The Chair understands when the committee rose last evening a point of order was pending upon the paragraph at the bottom of page 16 and on the top of page 17.

Mr. OVERSTREET. Mr. Chairman, may I inquire if there was a point of order reserved against both of the provisos on page 17?

The CHAIRMAN. There was a point of order, as the Chair understands, reserved against the paragraph.

Mr. FITZGERALD. Mr. Chairman, there was also a point of order reserved against the last clause of the paragraph on page 17 by the gentleman from South Carolina [Mr. JOHNSON].

The CHAIRMAN. Of course, the point of order against the paragraph will cover all points of order.

Mr. FITZGERALD. It might not be pressed if the other were sustained.

Mr. OVERSTREET. Mr. Chairman, I would like to dispose of these points of order. If I understand the parliamentary situation, there is a point or order against the entire paragraph beginning at line 19 on page 16, and ending with line 13 on page 17. Am I correct?

The CHAIRMAN. The gentleman's understanding is correct.

Mr. OVERSTREET. That is the point of order to which I wish to address myself.

Mr. LIVINGSTON. Mr. Chairman, I wish to suggest to the gentleman and to the Chair that there are two points of order—one against the last proviso on page 17.

The CHAIRMAN. If the Chair should sustain the point of order against the paragraph, of course the paragraph goes out. The point of order made and reserved against the paragraph would include the point of order against any portion of the paragraph.

Mr. FITZGERALD. Mr. Chairman, I suggest to the gentleman from Indiana [Mr. OVERSTREET] that he discuss first the point of order reserved against the portion of the paragraph. If that be sustained, it is possible that the other point would not be pressed.

Mr. OVERSTREET. I am satisfied, Mr. Chairman, that the point of order against the entire paragraph can not be sustained; that is, I think it can not be. That, of course, being disposed of, the other point of order would be before the committee.

Mr. JOHNSON of South Carolina. Mr. Chairman——

The CHAIRMAN. Let the Chair ascertain the situation. The Chair understands that the point of order was reserved by the gentleman from New York [Mr. FITZGERALD]. The Chair desires to ask the gentleman from New York whether he reserved the point of order upon the entire paragraph or upon the latter clause.

Mr. FITZGERALD. The RECORD shows, Mr. Chairman, that I reserved the point of order against the entire paragraph, and that the gentleman from South Carolina [Mr. JOHNSON] reserved the point of order against the last clause, on page 17, in the paragraph.

The CHAIRMAN. The Chair will hear the gentleman from Indiana on the point of order.

Mr. OVERSTREET. Mr. Chairman, I merely want to direct the attention of the Chair to the law authorizing the installation of pneumatic tubes. That law was passed April 21, 1902, and is found at page 9 of the general appropriation bill, which was passed at that date.

It is not, however, merely appropriation bill law. It is a statute which has in terms been fixed as permanent law. Under it authority is given under certain limitations, after inquiry, to make contracts for the pneumatic-tube service.

The CHAIRMAN. The Chair would like to ask the gentleman from Indiana if there is authority now for the making of contracts in cities other than those in which the service is now under contract?

Mr. OVERSTREET. Why, the general law, Mr. Chairman, authorizes the installation of pneumatic-tube service in any city so long as the expense of the service does not exceed 4 per cent of the gross receipts of the post-office, with a second limitation that the annual rental shall not exceed $17,000 per mile, except in cities having a less mileage than 3 miles.

The CHAIRMAN. Then, the Chair would like to ask the gentleman whether that law confines the letting of contracts to the cities named in the bill?

Mr. OVERSTREET. It does not authorize contracts in any specified cities, but the law is not very long and I will read it to the Chair:

The Postmaster-General is hereby authorized to enter into contracts for a period not exceeding four years—

After which, by amendment, that was raised to ten years—

after public advertisement once a week for a period of six consecutive weeks in not less than five newspapers, one of which shall be published in each city where the service is to be performed. That the contracts for this service shall be subject to the provisions of the postal laws and regulations relating to the letting of mail contracts, except as herein otherwise provided, and that no advertisement shall issue until after a careful investigation shall have been made as to the needs and practicability of such service and until a favorable report, in writing, shall have been submitted to the Postmaster-General by a commission of not less than three expert postal officials, to be named by him; nor shall such advertisement issue until in the judgment of the Postmaster-General the needs of the postal service are such as to justify the expenditure involved. Advertisements shall state in general terms only the requirements of the service and in form best calculated to invite competitive bidding.

That the Postmaster-General shall have the right to reject any and all bids; that no contract shall be awarded except to the lowest responsible bidder, tendering full and sufficient guaranties, to the satisfaction of the Postmaster-General, of his ability to perform satisfactory service, and such guaranties shall include an approval bond in double the amount of the bid.

That no contract shall be entered into in any city for the character of mail service herein provided which will create an aggregate annual rate of expenditure, including necessary power and labor to operate the tubes, and all other expenses of such service in excess of 4 per cent of the gross postal revenue of said city for the last preceding fiscal year.

That no contract shall be made in any city providing for 3 miles or more of double lines of tube which shall involve an expenditure in excess of $17,000 per mile per annum, and said compensation shall cover power, labor, and all operating expenses.

That the Postmaster-General shall not, prior to June 30, 1904, enter into contracts under the provisions of this act involving an annual expenditure in the aggregate in excess of $800,000; and thereafter only such contracts shall be made as may from time to time be provided for in the annual appropriation act for the postal service; and all provisions of law contrary to those herein contained are repealed.

Then fixing the rate.

Now, under that authority of law the Postmaster-General makes the inquiry and investigation, and upon his recommendation Congress makes the appropriation.

The CHAIRMAN. The Chair would ask if the Postmaster-General now has authority to institute pneumatic-tube service in any city under the provision of law the gentleman has just quoted—whether this bill does not change his authority and limit him to certain cities? The item in the bill does not purport to be a limitation on the appropriation.

Mr. OVERSTREET. Does the Chair refer to the first proviso?

The CHAIRMAN. The first proviso.

Mr. OVERSTREET. The first proviso does undoubtedly prohibit him from installing the service in any other cities than those named.

The CHAIRMAN. That would be a limitation upon his authority. It seems to the Chair if he has authority now, that would be a change of law, because it does not purport to be a limitation on this appropriation.

Mr. OVERSTREET. It is my judgment if the appropriation should be made the Postmaster-General would not need further direction than the general law which I have read, and without naming any cities could use that appropriation to install the service where he saw fit under the limitations of the 4 per cent gross receipts of the post-office.

The CHAIRMAN. The Chair is not called upon to express an opinion upon that subject now, because the item in the bill expressly limits that authority, if he now has it, that portion of the item clearly being subject to a point of order.

Mr. FITZGERALD. Mr. Chairman, I desire to call attention to a specific change in the law. The act to which the gentleman calls attention limits contracts to a period of four years, There is no authority now to make contracts for a period of ten years. This paragraph confers that authority upon the Postmasfer-General. That clearly is new legislation, because there is no such authority now conferred upon the Postmaster-General. I call the attention of the Chair to the language in the act of April 21, 1902, as follows:

The Postmaster-General is hereby authorized to enter into contracts for a period not exceeding four years.

A provision in the pending bill authorizes him to enter into contracts for periods not exceeding ten years.

Mr. STAFFORD rose.

The CHAIRMAN. Does the gentleman from New York [Mr. FITZGERALD] yield to the gentleman from Wisconsin?

Mr. FITZGERALD. Yes.

Mr. STAFFORD. I wish to direct the attention of the gentleman from New York to the act providing appropriations for the postal service, passed two years ago, limiting the term for which the Postmaster-General could contract for this service. The item in question is in the following words:

For transmission of mail by pneumatic tube or other similar devices, $900,000; and the Postmaster-General is hereby authorized to enter into contracts not exceeding in the aggregate $1,161,265.84, under the provisions of the law, for a period not exceeding ten years.

Mr. FITZGERALD. That contract was expressly limited to that appropriation. It does not apply to this appropriation.

Mr. STAFFORD. Under that act, as I contend, Mr. Chairman, that expressly authorizes the Postmaster-General, meeting the objection of the gentleman from New York, to extend the period of contract. It is supplemental to the former law, wherein he had only authority to contract for a period of four years. The very nature of the provision indicates that it was permanent authorization and was intended to supersede the prior limitation. I respectfully submit that the Postmaster-General, so far as this service is concerned, has authority to-day under that provision to enter into contracts for a period of ten years, as that service is appropriated for by Congress.

Mr. FITZGERALD. Mr. Chairman, the provision read by the gentleman from Wisconsin is merely a limitation upon the appropriation made at that time. It stated the amount authorized in the appropriation; but there is no authority anywhere giving power permanently to make ten-year contracts. The authority to make contracts was specifically limited to four years in the act of April 21, 1902.

Mr. STAFFORD. I reiterate that prior to this enactment he had authority to contract for four years. Here is a later expression of Congress, giving the Postmaster-General authority to contract for ten years, and that law is at present on the statute books and operative.

The CHAIRMAN. The Chair is prepared to rule.

The paragraph under consideration to which a point of order has been made is the provision relating to the pneumatic-tube service.

Provided, That said service shall not be extended in any cities other than those in which the service is now under contract under authority of Congress, except the borough of Brooklyn, of the city of New York, and the cities of Baltimore, Md., Cincinnati, Ohio, Kansas City, Mo., Pittsburg, Pa., and San Francisco, Cal.

If that proviso is subject to the point of order, the paragraph containing it is subject to the point of order. If the Postmaster-General does not now have authority, the item would probably be subject to the point of order.

The gentleman from Indiana [Mr. OVERSTREET] informs the Chair, quoting the statute, that the Postmaster-General now has authority to extend the pneumatic-tube service anywhere in the country under certain conditions and regulations. This item would limit and affect the Postmaster-General's authority, and does not purport to be a limitation upon the appropriation, but purports to change the existing authority, if any, which the Postmaster-General now has to extend the pneumatic-tube service, and hence is a change of the existing law. For that reason the Chair must sustain the point of order.

Mr. OVERSTREET. Mr. Chairman, I understand that takes out the paragraph from lines 18 on page 16 including line 13 on page 17.

The CHAIRMAN. That is correct.

Mr. OVERSTREET. Now, I offer the following amendment: Insert the language of the bill on page 16, beginning with line 19 and concluding with the word "year" on line 25.

The Clerk read as follows:

After line 18, on page 16, insert:

"For the transmission of mail by pneumatic tubes or other similar devices, $1,000,000; the Postmaster-General is hereby authorized to enter into contracts not exceeding in the aggregate $1,388,759, under the provisions of the law, for a period not exceeding ten years."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana.

The question was taken, and the amendment was agreed to.

Mr. OVERSTREET. I offer another amendment.

The Clerk read as follows:

And the Postmaster-General is hereby authorized and directed to investigate and report to Congress not later than January 1, 1909, the feasibility and desirability of the Government purchasing the equipment for pneumatic-tube service and thereafter operating the same in the cities where such service is now in operation.

Mr. TAWNEY. I reserve the point of order on that.

Mr. OVERSTREET. Just a word on the amendment, Mr. Chairman. It is quite apparent that there is a great difference of opinion among Members, and honest opinions, based upon rather good arguments in many cases, relating to this pneumatic-tube service which is under contract in a number of cities to more or less advantage. The amendment which I have offered incurs no appropriation and no expense. I thought it might be wise to call upon the Postmaster-General to investigate upon his own motion the subject of the tube service, the feasibility and desirability of the Government buying, and reporting to Congress his views upon it. It would give us a great deal of information which we do not now possess. It was brought out in debate yesterday whether or not it would not be possible to authorize the contractors or directors of these companies which installed the service finally to turn the property over to the cities in which they were serving, or, as one Member suggested, that the Government might own them at the end of the term. This inquiry, by way of this amendment, is to ascertain such facts as the Postmaster-General may be able to secure, and submit to the House for its action. I can see no objection to the inquiry. It does not bind the House to do anything. It enables us to get some information which would be valuable, and I shall be very glad if it might be adopted.

Mr. MURDOCK. May I ask the gentleman a question?

Mr. OVERSTREET. Yes.

Mr. MURDOCK. Is your amendment based at all upon a personal premise that it would be a good thing for the Government and profitable to the Government to own these tubes?

Mr. OVERSTREET. No; I have no opinion on that. I have drafted this amendment since the debate of yesterday and the action throwing out of the bill the provision for the five smaller cities. I have done so in order that we might have this information to use for whatever its value may be when it has been obtained.

Mr. STAFFORD. Mr. Chairman, I move to strike out the last word. I hope the gentleman from Minnesota will not press his point of order, because I believe it is very essential for Congress to have some facts concerning the cost of operation and the cost of installation of this very expensive service. For a long time I have believed it would be far better for the Government to establish and operate these expensive plants, and my reason for so believing has been that the greatest cost of this service lies in the cost of the plant; that the capital invested is permanently invested, and that the plant should be so established that it will be enduring in its character. From instances called to my attention in traveling about the country where this service has been installed, I have found by reason of defective installation where mail has been destroyed because the tubes have been placed in marshy ground, without proper isolation from moisture. In other instances mail clerks have been maimed by reason of the poor construction; and it stands to reason that any investor for a ten-year period, like an investor in any other utility, where the time of operation is limited for a definite period, must consider, in estimating the lease

value, that he will be reimbursed during those ten years for the value of the plant. That is undoubtedly the case here. It is the case where the owners of buildings leased for post-office purposes supply the furniture during the lease period. They, as a rule, add 10 per cent annually for the depreciation of the furniture in a ten-year lease.

Little expense is connected with the operation of these plants after they are once installed. In some instances the power that is necessary for operating them is provided right in the Government building. All these stations are connected with Government buildings, or with leased quarters in substations in some instances, except where they run to stations located at railroads. There can be no objection to government ownership of this utility, based on the claim that it will necessitate an expensive force for its maintenance. It should be established properly and adequately in the original instance, and I know no better place where that experiment should be tried out than in the city of Washington, where all the mail is received at one station; and by having pneumatic tubes to all the Government buildings, including the Capitol, the mail which is of such vital importance could be dispatched several hours quicker and the reply mail in many instances gain twelve hours in delivery than it is by the cumbersome method of delivery in vogue by means of the slow wagon service that each Department, including the House and Senate, has in bringing the mail from the central post-office to the respective Departments, for the mail would be assorted on the railway post-office and deposited in the pneumatic tube at the Union Station within a few minutes after arrival of the train and on its way to the different Departments.

The time of Mr. STAFFORD having expired, by unanimous consent it was extended five minutes.

Mr. MURDOCK. I know the gentleman is thoroughly familiar with this subject. That is the reason why I ask him this question: Has the gentleman any idea what the outlay of the Government would be if we purchased all the systems now in existence and built systems in the cities named in the bill?

Mr. STAFFORD. Although a commission to investigate this service made an inquiry into the service some eight or ten years ago, it failed to present any data whatsoever as to the cost which would be required to establish the plant. Many times in committee, since I have had the honor to serve on the subcommittee that has had the preparation of this bill, we have directed inquiries to the Second Assistant Postmaster-General as to whether he could furnish us with any estimate of cost, but he could not furnish any data, nor even an estimate; but it stands to reason that these contractors who invest their money on the contingency of a return for a limited period, of uncertain tenure, are going to charge adequate rental, to be reimbursed during that period for the cost of the plant.

The gentleman will see there is nothing to induce them to equip their plant for permanency. The case is parallel to that of the Government establishing post-office buildings, appraisers' buildings, projecting and supervising its river and harbor improvements, aids to navigation, and the like, rather than renting them, because by private contract they will not provide as good means of service as under public control and ownership.

Mr. MURDOCK. Has the gentleman any idea whether it would cost five millions, ten millions, twenty millions, or thirty millions to equip the larger cities of this Government with the pneumatic-tube service?

Mr. STAFFORD. It all depends to what extend the tube service is going to be extended. The gentleman is well aware from his experience on the committee that there was an extension of double the service authorized in Philadelphia two years ago. Brooklyn to-day is clamoring for an extension of the pneumatic-tube service in the residential districts. Personally, I do not believe that the service should be extended to residential districts where deliveries and collections are few, but it should be limited to the congested business districts, which have frequent collections and which have need of expeditious mail service.

Mr. WANGER. Will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. WANGER. Will the gentleman kindly enlighten the House as to the relative utility and value of the pneumatic-tube service, say in the great cities like New York and Philadelphia?

Mr. STAFFORD. As to the utility between these respective cities, they are strikingly in contrast, because in New York City it is of superior value on account of its peculiar location, and in Philadelphia the conditions are wanting to render it of so much value. The gentleman knows that in New York, because of the peculiar form of the island of Manhattan, business is centered along a narrow strip for a long distance, and it is difficult to get the mail from the far outlying postal stations to the main office, the other substations, and the railroad stations; and therefore this tube service is of great utility for the dispatch of the mail.

In Philadelphia, where the postal stations, like that at Tenth and Columbia avenue and at Snyder avenue, are in largely residential districts, the mail is not very heavy and the carrier force is limited and collections and delivery not so frequent as in the business districts, it is of doubtful expediency, because all these stations are also supplied with electric-car service; and, further, that since the establishment of this tube service no diminution has resulted in the service by the electric car. In my opinion the electric-car service is adequate to meet the needs of residential districts. But this pneumatic-tube service is of great utility in New York and Chicago for the business sections exclusively, but not for the residential districts.

Now, replying to the gentleman from Kansas, my colleague on the committee, as to the cost, I say that will depend on the extension of the service, how far it would be carried. Of course the proposition could run wild into the hundreds of millions, but I question whether that would ever be done. I think there is no more danger to fear that under the present policy of paying high rental it would be any more unduly extended than it would to provide for the permanent plant.

I repeat, that no other place is better suited to make such an experiment than right here in Washington where we have such need for the best service.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. WANGER. I ask unanimous consent that the gentleman have one minute more.

The CHAIRMAN. The gentleman from Pennsylvania asks that the time of the gentleman from Wisconsin be extended one minute. Is there objection?

There was no objection.

Mr. WANGER. What proportion of the mail from the Grand Central Station, New York, is delivered by pneumatic tubes and what part by the screen-wagon service?

Mr. STAFFORD. I am not able to give the gentleman the data, but I will say that so much of the first-class mail as can be dispatched by the pneumatic tube that will expedite the delivery of the mail is sent to the respective postal stations. If the gentleman will examine the hearings of two or three years ago when we provided for building a new post-office building at the projected Grand Central Station and the new Pennsylvania station he will get some idea of what the plan is for the quick dispatch of the mails in New York City so as to relieve the congested condition of the main post-office and the congested condition of the postal service in general. Now, I hope after this presentation that the gentleman from Minnesota will see the urgent need of having this amendment adopted and of having some investigation made so that Congress can act intelligently upon the matter at the next session.

Mr. TAWNEY. Mr. Chairman, I wish to state for the information of the gentleman from Indiana [Mr. OVERSTREET], in charge of this bill, that in making the point of order against this provision I do not do so on the ground of expense, as was suggested. I know the investigation may be made without any additional appropriation. I do not believe, Mr. Chairman, there is anyone here who thinks seriously of the Government owning and operating any of the physical agencies employed in the transportation of the mail. I can see no greater reason for the Post-Office Department investigating the question of whether or not it would be advisable to own and operate this particular agency than there is for investigating the question of owning and operating any other agency. If we adopt this we should also adopt an amendment authorizing a report on the advisability of purchasing, owning, and operating all of the agencies employed in the transportation of the mail, including the horses, the mail wagons, the cars, and the railroads on which the mails are carried. This is new legislation, and for that reason I make a point of order.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For regulation, screen, or other wagon service, $1,700,000: *Provided*, That the Postmaster-General is hereby authorized to contract, for a term not exceeding four years from July 1, 1908, by either screen-wagon or underground electric-car service in the city of Chicago, Ill.

Mr. WANGER. Mr. Chairman, I reserve a point of order. I want to ask the gentleman a question. Does he think it advisable to give this authorization without any limit or suggestion of cost, which may be expended for the particular service?

Mr. OVERSTREET. Mr. Chairman, the situation in Chicago is just this: There is a contract there now for the carrying of the mail by tunnel service. That was carried in the former bill

under the item for the electric and cable car service. That contract will expire on the 30th of June next, and a new contract must be made. Negotiations are now pending. We transferred the item to the screen-wagon service in order to involve the alternative of either a contract by the screen-wagon or tunnel service.

If we fix a maximum amount, it will be taken as notice that that maximum amount will be considered by Congress as a proper amount for the Government to make the contract for. Supposing, for instance, we should say not to exceed $200,000. It is utterly impossible to get the service for $200,000. Supposing you should say not to exceed $400,000. Then that would be considered as notice that so far as Congress was concerned we were quite willing they should pay $400,000, and the chances are that the contract would be made no lower. Leaving it entirely within the discretion of the Department, where we know under the investigations thus far made that it will either be a fair and reasonable amount or will be by screen-wagon service, the committee felt that it would not be necessary to fix the limit.

Mr. WANGER. Mr. Chairman, I am fully persuaded of the importance of this tunnel service if it can be secured on reasonable terms, and having every confidence in the distinguished gentleman who is the Second Assistant Postmaster-General, as well as the Postmaster-General, I make no point of order.

The CHAIRMAN. The gentleman from Pennsylvania withdraws his point of order, and the Clerk will read.

The Clerk read as follows:

For mail bags, cord fasteners, label cases, and labor and material necessary for manufacture and repairing equipment, and for incidental expenses pertaining thereto, $500,000: *Provided*, That out of this appropriation the Postmaster-General is authorized to use so much of the sum, not exceeding $4,500, as may be deemed necessary for the purchase of material and the manufacture of such small quantities of distinctive equipment as may be required by other Executive Departments and for service in Alaska, Porto Rico, Philippine Islands, Hawaii, or other island possessions, and for such special equipment for testing and for other purposes in connection with the reduction in weight of mail pouches and sacks.

Mr. TAWNEY. Mr. Chairman, I reserve a point of order on that. I would like to have the gentleman in charge of the bill explain that provision.

Mr. OVERSTREET. Mr. Chairman, as I understand the paragraph authorizes $4,500 for the manufacture of mail bags.

Mr. LIVINGSTON. The proviso is new.

Mr. TAWNEY. No; it is the distinctive equipment. What kind of equipment does the gentleman intend the Government to purchase.

Mr. OVERSTREET. It is largely in the nature of small mail bags that can be used by filling the entire bag with departmental mail, or mail for the Philippine Islands, Hawaii, Alaska, or Porto Rico, where a larger bag would not be required. It is in the interest of economy and not in the interest of extravagance.

Mr. TAWNEY. It is not that, but I will call the gentleman's attention to the fact that the latitude allowed the Postmaster-General under that language is so wide that he can use that amount of money for any purpose in relation to equipment. It does not refer to mail sacks. If it is mail sacks, why does not the gentleman say so?

Mr. OVERSTREET. It refers to all the material and devices that go into the manufacture of the mail bags. The Department is experimenting to ascertain if it may not be possible to have lighter material used—lighter locks, lighter straps, as well as lighter material in the bags themselves. They are experimenting with the use of aluminum instead of cast iron, so as to make the mail bags as light as possible. That is the general character of the experimental purpose authorizing this $4,500 expenditure. The remainder of the appropriation is entirely for the mail-bag repair.

Mr. TAWNEY. Mr. Chairman, I withdraw the point of order.

The CHAIRMAN. The gentleman from Minnesota withdraws the point of order, and the Clerk will read.

The Clerk read as follows:

For inland transportation by railroad routes, $44,000,000.

Mr. HOUSTON. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend, on page 18, by adding after the end of line 13, the words: "*Provided*, That no part of said sum shall be used to pay for the carrying in the mails of any malt, vinous, or spirituous liquors or intoxicating liquors of any kind."

Mr. OVERSTREET. Mr. Chairman, I make the point of order against that amendment. It is contrary to existing law.

The CHAIRMAN. The Chair would feel compelled to follow the ruling of the occupant of the chair yesterday, who ruled on an identical proposition and overruled the point of order.

Mr. OVERSTREET. If the Chair will permit the statement, the gentleman who occupied the chair on yesterday sustained the point of order on an identically similar proposition. The point of order was overruled where the amendment was offered to an item of a bill which itself was subject to the point of order, but the point of order was sustained later by the Chair where it was offered to a provision of the bill which in itself was not subject to a point of order.

The CHAIRMAN. The present occupant of the chair remembers that he made an argument in favor of sustaining the point of order, and his recollection was that the Chair thereupon overruled the point of order.

Mr. OVERSTREET. I am desirous of placing right the gentleman who occupied the chair at the time the ruling was made. I am not questioning the argument which the present occupant of the chair made at the time. I ask for a ruling on the point of order.

Mr. FITZGERALD. On page 3289 of the RECORD is found the ruling made yesterday.

The CHAIRMAN. The Chair finds upon examination that the recollection of the present occupant of the chair about the transaction of yesterday is correct, and that the gentleman from Indiana [Mr. OVERSTREET] is in error. The RECORD shows, on page 3289, in the last column, what the decision of the Chair was upon the same proposition. The Chair feels constrained to overrule the point of order.

Mr. OVERSTREET. Mr. Chairman, may I inquire to which paragraph of the bill the point of order was addressed?

The CHAIRMAN. The point of order was addressed to an amendment to a paragraph on page 16, lines 15 and 16.

Mr. OVERSTREET. I understood that the Chair sustained the point of order as to that paragraph. If I am in error on that, why, then I retract what I stated a while ago.

The CHAIRMAN. The Chair overrules the point of order.

Mr. FITZGERALD. Mr. Chairman, I move to amend by adding the words, "or any cocaine or derivative thereof," so that this amendment shall be the same as the one adopted yesterday.

The CHAIRMAN. The gentleman from New York offers an amendment to the amendment, which the Clerk will report.

The Clerk read as follows:

Add at the end of the amendment, "or any cocaine or any derivative thereof."

The CHAIRMAN. The question is on the amendment to the amendment.

The question was taken, and the amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Tennessee as amended by the amendment offered by the gentleman from New York.

The question was taken, and the amendment was agreed to.

Mr. WANGER. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. WANGER] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend by adding after the amendments, line 13, page 18, the following:

"*Provided*, That not exceeding six-sevenths of the amount ascertained pursuant to the weighing of the mail on any route in the year 1905 or in the year 1906 as the annual pay on such route for transporting the mail shall be paid out of the moneys hereby appropriated until such ascertainment shall have been readjusted in accordance with order of Postmaster-General Meyer, No. 412, or until it shall have been finally determined by law that the first-recited ascertainments are binding upon the Government for the ensuing fiscal year, notwithstanding any error or wrong in the basis of such ascertainments."

Mr. OVERSTREET. Mr. Chairman, I reserve a point of order on that.

Mr. WANGER. Mr. Chairman, I submit that this is a question worthy the consideration of every Member of this House. On March 3 the gentleman from Missouri [Mr. LLOYD] said, in the course of a very able and elaborate address in this Chamber:

I am leading up to what I regard as an exceedingly serious question. If the present ruling of the Postmaster-General is correct, if Order 412 is a correct interpretation of the law, then this Government, the people of this Republic, have been robbed of seventy millions of dollars since 1880. If this statement of the ruling of the Postmaster-General is correct, then this Government has paid into the hands of the railroad companies $70,000,000 that belong to the people of the country. Now, why do I say that? All agree that the change in divisors cuts down the railway mail pay 9.65 per cent. For the purpose of computation call it 10 per cent. The railway mail pay in 1880 was, in round numbers, $10,000,000. In 1907 the railway mail pay was $44,660,000. Adding these together makes $54,660,000. Divide that by two and you have the average amount—and it is pretty nearly correct—$27,700,000,

the amount that has been paid annually to the railway companies for carrying the mail. Now, following the latest interpretation of the law, 10 per cent of the $27,000,000 belongs to the people, and in every year during that time there has been paid to the railroad companies $2,700,000 which belongs to the people—the Government itself.

Let me add right here that under the computation submitted by the Post-Office Department to the Committee on the Post-Office the estimate of the differences in pay in the two unweighed sections of the country for the current year approximate $2,000,000, which, as I understand, is included and proposed to be appropriated for in this item. If I err, I trust the chairman of the committee will correct me.

The gentleman proceeded further:

Another remarkable thing in that connection. The Postmaster-General having found out, apparently, that the law was not properly interpreted, that the railroad companies had been receiving 10 per cent too much, this last order was made in June; but it was only made to apply to one of the four weighing sections of the United States.

Three of these weighing sections are not now under the provisions of that order. The Postmaster-General has placed himself in the anomalous position of admitting that the divisor was wrong, and is paying out of the Treasury in the current year over $3,000,000 without any warrant of law and in violation of the law as he construes it himself. Is it not a serious proposition? There is no way around it. If the Postmaster-General's order is right, then this money belongs to the people.

It certainly does appear to be anamolous that the Attorney-General of the United States should conclude by an exposition so luminous that none can fail to see the force of his proposition, and no one can apparently successfully contradict or impeach the logic of his conclusion of fact, that where 365,000 pounds of mail matter are carried by a route in an entire year——

The CHAIRMAN. The time of the gentleman has expired.

Mr. WANGER. I ask unanimous consent to proceed for fifteen minutes.

The CHAIRMAN. The gentleman asks unanimous consent to proceed for fifteen minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. WANGER. It means an average of 1,000 pounds per day, no matter how many days the mails were weighed, that being the conclusion of fact that he reached; that an error has crept into the practice of the Post-Office Department and excessive payments have been made—that there is no suggestion for the discontinuance of such payments or any part of them. The facts of the matter are, as I am informed by those in the Post-Office Department specially charged with the administration of the subject-matter involved, that the maximum rates of pay authorized by law are accorded to a great majority of the carrying roads of the country, and each of these routes receives the maximum legal pay where only the true average is ascertained. Nevertheless the fact is that by a false process of reaching the conclusion as to average weight carried per day, the rate can be raised in accordance with the manner of weighing, so as to give the advantage to a number of companies of seven-sixths of the maximum pay for carrying the mail. The gentleman was right in saying that that was an anomalous position, and while the legal argument of the Attorney-General, in my humble opinion, is unanswerable and his illustration setting out the right way of ascertaining the true daily average of mails carried is right in point and condemns the past practice of the Department, yet, whether it was a desire to avoid a conclusion attributing error to another and fellow-Cabinet officer, or for some other reason equally creditable to his heart, he finally concludes that whether the Postmaster-General shall adopt one method of ascertainment, which gives the maximum rate of pay, or whether he will adopt another method whereby the daily average it produces will give seven-sixths of the maximum pay authorized by law for performing the service, that it is within the discretion of the Postmaster-General to adopt one or the other method.

It may seem ungracious for me to presume to question the conclusions of the Attorney-General of the United States, and I have no controversy with him as to his reasoning respecting the law involved, and for a clear recital of the subject and of his treatment of it I here insert his opinion:

OPINION OF THE ATTORNEY-GENERAL IN THE MATTER OF COMPENSATION OF RAILROAD COMPANIES FOR CARRYING THE MAILS, ETC.

DEPARTMENT OF JUSTICE,
Washington, September 27, 1907.

The POSTMASTER-GENERAL.

SIR: I have the honor to acknowledge your request for an opinion as to the legality of order No. 412 of your Department, issued June 7, 1907, and of order No. 165, for which it was a substitute. I learn from you that these orders are as follows:

Order No. 165, dated March 2, 1907:

"That when the weight of mail is taken on railroad routes, the whole number of days the mails are weighed shall be used as a divisor for obtaining the average weight per day."

Order No. 412, dated June 7, 1907:

"When the weight of mail is taken on railroad routes, the whole number of days included in the weighing period shall be used as a divisor for obtaining the average weight per day."

The statutes which appear to bear directly on the subject are the following:

Section 4002 of the Revised Statutes (from the act of March 3, 1873, 17 Stat., 558):

"SEC. 4002. The Postmaster-General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned.

"First. That the mails shall be conveyed with due frequency and speed and that sufficient and suitable room, fixtures, and furniture in a car or apartment properly lighted and warmed shall be provided for route agents to accompany and distribute the mails.

"Second. That the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of 200 pounds, $50; 500 pounds, $75; 1,000 pounds, $100; 1,500 pounds, $125; 2,000 pounds, $150; 3,500 pounds, $175; 5,000 pounds, $200; and $25 additional for every additional 2,000 pounds, the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times, after June 30, 1873, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct."

Post-office appropriation act of March 3, 1875 (18 Stat., 341), following an appropriation for inland mail transportation by railroad:

"* * * And out of the appropriation for inland mail transportation the Postmaster-General is authorized hereafter to pay the expenses of taking the weights of mails on railroad routes, as provided by the act entitled 'An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1874,' approved March 3, 1873; and he is hereby directed to have the mails weighed as often as now provided by law by the employees of the Post-Office Department and have the weights stated and verified to him by said employees under such instructions as he may consider just to the Post-Office Department and the railroad companies."

Post-office appropriation act of March 3, 1905 (33 Stat., 1088), following an appropriation for inland mail transportation by railroad:

"*Provided*, That hereafter before making the readjustment of pay for transportation of mails on railroad routes the average weight shall be ascertained by the actual weighing of the mails for such a number of successive working days, not less than ninety, at such times after June 30, 1905, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct."

The acts of July 12, 1876 (19 Stat., 79), June 17, 1878 (20 Stat., 142), and March 2, 1907 (35 Stat., 1205–1212), make certain changes in the rates of compensation, but none in the method of ascertaining the average daily weight of mail transported.

Were this question res integra, I should not consider it one of much difficulty. United States Revised Statutes 4002 fixes a rate of yearly pay per mile of track used to transport the mails, determined by the "average weight of mails per day" carried the entire length of the route. I see no escape from the conclusion that this means the average weight per day during a year; so that if on a particular route there were thus carried on one day 365,000 pounds and on the remaining 364 days nothing at all, the "average weight of mails per day" on which the annual compensation should be calculated would be 1,000 pounds. If, therefore, it had been deemed practicable or advisable to weigh all the mails transported by rail every day of the year, there could have been, to my mind, no doubt as to how the "average weight per day" would be determined, whether the mails were so carried on 365 days or on 313 or on 156 or on 12 or, as above suggested, on 1 day, their aggregate weight would have been added up and divided in all cases alike by 365.

It is, however, often impracticable without unreasonable labor to ascertain a strictly accurate average, and in such cases a conventional average is frequently established by law, agreement, or custom which is nearly enough right for all practical purposes and can be ascertained with vastly less trouble. A familiar example of this practice is the calculation of interest on a current bank balance. For this to be absolutely correct the balances due on every day of the year would have to be determined, added up, and divided by the whole number of days, i. e., 365, which, in the case of, say, a savings bank with many thousands of small accounts might involve an expense altogether disproportionate to the amount of the interest. It is therefore customary to ascertain the balances on a comparatively small number of days, often twelve, throughout the year, average these, and assume the result to be the average annual balance for the purpose of calculating interest.

It seems to have been, or to have been thought, unreasonably burdensome to require the mails to be weighed every day of the year, and the Congress, by the acts of March 3, 1873, and March 3, 1905, above noted, prescribed conventional methods of ascertaining the average weight. The methods are thus stated:

Act of March 3, 1873:

"* * * The average weight to be ascertained, in every case, by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times, after June 30, 1873, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct."

Act of March 3, 1905:

"* * * The average weight shall be ascertained by the actual weighing of the mails for such a number of successive working days, not less than ninety, at such times after June 30, 1905, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct."

It will be noted that these two acts say nothing about "divisors," and indeed do not profess to deal with the method of computation at all. How, from the statement of weights, he should obtain the result sought—that is to say, the daily average for a year on which the compensation was to be based—was a matter left to the discretion of the Postmaster-General. The Congress said to him only: "You need not cause the mails to be weighed every day of the year to ascertain the average weight per day during the year. You may, if you so choose" (for, it is to be observed, the law is permissive merely; the Postmaster-General, if he has money enough, may order the mails to be weighed for three hundred and sixty-five days). "You may, if you choose, weigh the mails only thirty (now ninety) days of each year, and only once in four years; but if you do this, the days selected must be *working days* and must be *successive*."

It is important to determine the meaning of the words lastly above italicized. It is said that "working days" has been consistently interpreted by the practice of your Department to mean "week days."

I do not think this statement can be sustained, for I am informed by you that prior to the act of 1905 the practice had been to weigh the mails on thirty-five consecutive days, thus including five Sundays. Now, I think, the law is on one point, at all events, perfectly clear: The mails are to be weighed on "working days" and on "working days" only; the use of the word "successive," instead of "consecutive," or some term of similar import, harmonizes exactly with this literal and, to my mind, unavoidable interpretation of the remaining words used. If, therefore, "working days" are to be read "week days," the practice of your Department, in thus weighing the mails on five Sundays, has been altogether illegal. If, however, the meaning of "working days" be "days on which mails are carried," the practice, to this extent, has been legal and in accord with what I believe to be the true intent of the law. As the practice of any of the great Executive Departments must always be assumed, so far as such assumption be possible, to rest upon a consistent and tenable view of the law, it is, I think, fair to say that the practice of the Post-Office Department, as contradistinguished from the language sometimes used by prominent officials in the course of the prolonged discussion of questions connected with this subject-matter, sustains the view that the words "working days" mean "days on which the carrier does work for the Post-Office," and not "week days;" and this I regard as clearly the true interpretation of the law.

It would seem, however, that an error has crept into the practice of your Department, as hereinafter stated, in the method of dealing with the information furnished through weighing the mails for at least thirty, now ninety, working days. As above noted, the obvious purpose of this provision is to relieve the Postmaster-General from the necessity of weighing the mails for every working day of the year. It does not prohibit him from weighing the mails throughout the year; nor does it require that the number of working days on which the mails are weighed shall be the same in the case of every carrier, although in none may they be less than thirty, now ninety, or other than "successive." Moreover, it in no wise changes the purpose of the inquiry, which, as above explained, has always been to ascertain a fair average per day during a year; not, of course, a fair average per day during seven or thirty or thirty-five or ninety or one hundred and five days, or any other fraction of a year. Having obtained from the results of the weighing such information as it can furnish as to the fair average weight for a "working day," it is left to the Postmaster-General to so deal with this information as to determine from it by appropriate calculations what would be a fair daily average for the ends of the law, i. e., as a basis for an annual compensation. It is obvious that from the mere weighing (which is all the law prescribes), standing alone, nothing would be determined as to the average. The Postmaster-General must therefore do something not mentioned in the statute to ascertain this, and although this matter is left to your discretion, and you are, of course, in no wise bound by any views expressed in this opinion regarding it, I think it may conduce to clearness if I here indicate what form of calculation appears to me best adapted to attain the ends of the law. We may suppose three railroads, of which one serves the mails seven, one six, and one three days in each week, and that the aggregate results of the weighing, divided by the number of days on which, in each case, the mails have been weighed, shows in each a daily average per working day of 1,000 pounds. In determining for each the fair average per day during a year, no change is needed in the figures for the first; those for the second should be reduced by one-seventh, and those for the third by four-sevenths; so that the first would be 1,000 pounds, the second 857.14 pounds, the third 428.57 pounds.

I have said that I should consider the question involved in your request one of no great difficulty were it a new one. Such, however, is not the case.

Prior to the issuance of Order No. 165 on March 2, 1907, the uniform practice of the Post-Office Department, except for a short period in 1884, as hereinafter stated, in determining the average daily weight of mail transported on railroad routes, appears to have been to have such mail weighed for a period covering not less than thirty successive working days (which term had been alleged to mean thirty successive week days, and therefore made such weighing period cover at least five weeks, or thirty-five days), and in every case, whether the mail was carried and weighed three, six, or seven days of the week, to divide the total weight thus ascertained by the number of working or week days in such period—that is to say, thirty. Thus in the case of a route on which the mail was carried three days of the week the weight was taken on such days for five weeks and the aggregate of the fifteen weighings divided by thirty to obtain the daily average. The same process was followed for thirty or thirty-five weighings, respectively, in the cases of routes on which the mail was carried six and seven days of the week. The average obtained was described as a "working" or "week" day average and not considered a daily average; but with regard to Sunday carrying roads it was evidently neither.

This practice, it appears, grew out of an effort to compensate the Sunday carrying roads for facilitating the transmission of the mails. It was thought that if the weight of mails carried on Sundays had been omitted in the case of such roads they would not only have received no compensation for carrying the same, but would have suffered an actual loss by reason of their diligence because by delaying the same until Monday it was said that they could have had such mail weighed in on that day.

In a letter from the Second Assistant Postmaster-General to C. Jay French, superintendent railway mail service, fifth division, dated March 24, 1876, there are the following instructions:

"The mails are to be weighed for the given number of successive working days (thirty in the weighing to which these instructions particularly relate), and in case mails are carried on any route also on Sundays, returns of the weights of such Sunday mails are to be furnished in the same manner as the others, to be included in consolidating the returns for the period, the object being, as you are aware, to obtain a fair average of the service for the working year. On the other hand, if mails are conveyed less frequently than every working day, the period of the weighing is not to embrace more than the given number of working days, counting both those on which the mails are conveyed and those on which they are not, the object being the same as in the other case."

On September 18, 1884, Postmaster-General W. Q. Gresham issued order No. 44, as follows:

"That hereafter when the weight of mails is taken on railroad routes performing service seven days per week the whole number of days the mails are weighed, whether thirty or thirty-five, shall be used as a divisor for obtaining the average weight per day."

Postmaster-General Gresham retired in October, 1884. Postmaster-General Frank Hatton, who succeeded him, submitted the question to the Attorney-General, his letter and the reply thereto being as follows:

OCTOBER 22, 1884.

SIR: The act of March 3, 1873 (17 Stat., p. 558), regulating the pay for carrying the mails on railroad routes, provides * * * "That the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of 200 pounds, $50; 500 pounds, $75; 1,000 pounds, $100; 1,500 pounds, $125; 2,000 pounds, $150; 3,500 pounds, $175, etc. * * * ; the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty. * * *."

Upon a large number of the railroad routes mails are carried on six days each week—that is, no mails are carried on Sunday. On others they are carried on every day in the year.

It has been the practice since 1875, in arriving at the average weight of mails per day on these two classes of service, to treat the "successive working days" as being composed of the six working or secular days in the week, which is explained by the following illustrations:

Two routes, No. 1 and No. 2, over each of which 313 tons of mail are carried annually:

On route No. 1 mails are carried twice daily, except Sunday, six days per week, and are weighed for thirty successive working days—covering usually a period of thirty-five days. The result is divided by 30 and an average weight of mails per day of 2,000 pounds is obtained.

Transportation per mile of road per annum	miles	1,252
Weight per mile of road per annum	tons	313
Pay per ton per mile of road per annum	cents	37.92
Pay per mile run	do	11.9
Rate of pay allowed per mile per annum		$150

On route No. 2 mails are carried twice daily, seven days per week, and are weighed for thirty successive working days and for the intervening Sundays, the weight on the Sundays being treated as if carried on Mondays, the weighing, as before, covering usually a period of thirty-five days. The result is divided by 30 and an average weight of mails per day of 2,000 pounds is obtained.

Transportation per mile of road per annum	miles	1,460
Weight per mile of road per annum	tons	313
Pay per ton per mile of road per annum	cents	47.92
Pay per mile run	do	10.2
Rate of pay allowed per mile per anum		$150

I have thought it necessary to give the foregoing illustrations in order that the practice of this Department under the law cited may readily appear, and I will thank you to advise me whether that practice is in compliance with or in violation of the statute. If not in conformity with the law, will you please indicate the correct method by which the average weight per day should be obtained and the compensation adjusted thereon.

Very respectfully,

FRANK HATTON,
Postmaster-General.

Hon. B. H. BREWSTER,
Attorney-General, Department of Justice.

DEPARTMENT OF JUSTICE, *October 31, 1884.*

SIR: I have considered your communication of the 22d instant, requesting to know whether the construction placed by the Post-Office Department on section 4002, subordinate section 2, prescribing the mode in which the average of the weight of mails transported on railroad routes shall be ascertained is correct, and am of opinion that that construction is correct, and that a departure from it would defeat the intention of the law and cause no little embarrassment.

I have the honor to be, your obedient servant,

S. F. PHILLIPS,
Acting Attorney-General.

The POSTMASTER-GENERAL.

The above letter from the Acting Attorney-General is taken from Opinions of Attorney-General, Volume VIII, page 71. While it is there stated that it was signed by S. F. Phillips, the original, received at the Post-Office Department, is signed by William A. Maury.

Postmaster-General Gresham's order was revoked January 16, 1885. This order had evidently in view the same purpose as order No. 165.

We have here, then, a case where the practical interpretation placed upon the act of Congress of March 3, 1873, in regard to obtaining the daily average weight of mail upon railroad routes by the Post-Office Department has been, except for a few months, unbroken for thirty-five years, although its correctness was authoritatively challenged. It also appears that while Congress, in 1876 and 1878 and again in 1907, provided for a reduction in the maximum rates established by the act of March 3, 1873, it made no change in the provision as to obtaining the average weight. It further appears that in 1905 Congress reenacted that provision in exactly the same language, except that "ninety" was substituted for "thirty."

Moreover, it should be noted that the post-office appropriation bill (H. R. 25483) reported to the House on February 6, 1907, provided:

"The Postmaster-General is hereby authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1907, for the transportation of mails on railroad routes carrying their whole length an average weight of mails per day of upward of 5,000 pounds by making the following reductions from the present rates per mile per annum for the transportation of mails on such routes: On routes carrying their whole length an average weight of mail per day of more than 5,000 pounds and less than 48,000 pounds, 5 per cent; 48,000 pounds and less than 80,000 pounds, 10 per cent, and $19 additional for every additional 2,000 pounds: *Provided*, That hereafter the average weight per day be ascertained in every case by the actual weighing of the mails for such a number of successive days, not less than 105, at such times and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct: *Provided further*, That hereafter, at the time of the weighing of the mails at the periods required by law, empty mail bags shall not be weighed nor taken as any part of the total weight of mails in estimating the pay for transportation of said mails."

The accompanying report from the Committee on the Post-Office and Post-Roads and two minority reports discussed the question very fully and showed clearly the intention on the part of the committee, that, in the words of its report—

"In computing the average weight of mail carried per day, the whole number of days such mail may be weighed shall be used as the divisor."

On February 20, 1907, while the House in Committee of the Whole was considering the post-office bill, the following amendment was offered by Mr. MURDOCK to follow the provision "For inland transportation by railroad routes, $44,660,000:"

"*Provided*, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of a divisor less than the whole number of days such mails have been weighed."

A point of order was made against this amendment on the ground that it changed existing law. The Chair sustained the point, observing (41 Cong. Rec., 3471):

"The CHAIRMAN. The existing law has received a construction by the officers charged with the duty of administering it, and that construction the Chair feels bound to follow. The proposed amendment changes existing law as construed by the proper officer, by changing the divisor. This is in the guise of a limitation; but it has been held over and over again here that a limitation is negative in its nature and may not include positive enactment establishing rules for executive officers. It has been held further that while limitation may provide that a part of an appropriation shall not be used except in a certain way, yet the restriction of executive discretion may not go to the extent of an imposition of new duties. And the limitation on the discretion exercised under the law by a bureau of the Government is a change of existing law. The decisions on the question of limitation, the attempt to draw a well-defined distinction between changes of existing law and a proper limitation, are among the most difficult questions that the Chair is ever called upon to decide."

Upon appeal from the decision of the Chair its ruling was sustained. (Id., 3472.)

Later on the same day the provision of the bill above quoted directing the Postmaster-General to readjust the compensation to be paid from and after July 1, 1907, for the transportation of the mails on railroad routes, which included the proviso "That hereafter the average weight per day be ascertained, in every case, by the actual weighing of the mails for such a number of successive days," etc. (the word "working" being omitted), also went out upon a point of order (41 Cong. Rec., 3473). Subsequently, on the same day, the rules were suspended, and this provision, without the proviso as to obtaining the average, was inserted and became the law. (Id., 3494.)

The principles of law bearing upon the solution of the matter under consideration in this aspect are settled by decisions of the Supreme Court of the United States.

It has been held that where the meaning of a statute is doubtful or ambiguous the practical construction placed upon it by the Department of the Government charged with its administration, if contemporaneous, uniform, and long continued, although not deemed controlling on the courts, is to be treated with respect and will ordinarily be followed. (Brown *v.* United States, 113 U. S., 568; United States *v.* Philbrick, 120 U. S., 52; Robertson *v.* Downing, 127 U. S., 607; United States *v.* Alabama R. R. Co., 142 U. S., 615.)

In the last-mentioned case, which involved the question of compensation to railroads for carrying the mails, the court said:

"* * * It is a settled doctrine of this court that, in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the Department charged with the execution of such statute, and, if such construction be acted upon for a number of years, will look with disfavor upon any sudden change whereby parties who have contracted with the Government upon the faith of such construction may be prejudiced."

But the true scope of this principle is illustrated by a considerable number of cases in which the court has refused to adopt the departmental construction of a statute. In these cases the court has said that such departmental construction is without weight where the statute is clear and explicit and free from ambiguity or doubt. (Swift Co. *v.* United States, 105 U. S., 691, 695; United States *v.* Graham, 110 U. S. 219, 221; United States *v.* Tanner, 147 U. S., 661, 663; United States *v.* Alger, 152 U. S., 384, 397; Studebaker *v.* Perry, 184 U. S., 258, 268–269.)

In Swift Co. *v.* United States, the court says:

"There is no serious question raised as to the proper construction of the internal-revenue acts upon the point, it being virtually admitted that the contention on the part of the appellant upon the provisions of the statutes is correct.

"It is met, however, in the opinion of the Court of Claims, and in argument on behalf of the Government here, that the contrary construction, to pay these commissions in stamps at their face value, has been acted upon by the Commissioner of Internal Revenue from the beginning, has been acquiesced in by purchasers and dealers, and has never been changed by Congress; and as an official practice has thus acquired the force of law, or if not, then, at least, it was a course of dealing, well known to the appellant, and acquiesced in, by which it accepted stamps at their face value in payment of its commissions, which it is not at liberty now to open, question, and reverse.

"The right construction of the internal-revenue acts upon the point of the allowance of commissions to dealers in proprietary articles, purchasing stamps made from their own dies, and for their own use, is too clear to bring the case within the first alternative. The rule which gives determining weight to contemporaneous construction, put upon a statute, by those charged with its execution, applies only in cases of ambiguity and doubt. (Edward's Lessee *v.* Darby, 12 Wheat., 206; Smythe *v.* Fiske, 23 Wall., 374; United States *v.* Moore, 95 U. S., 760; United States *v.* Pugh, 99 id., 265.)"

In United States *v.* Alger, the court says:

"If the meaning of that act were doubtful its practical construction by the Navy Department would be entitled to great weight. But as the meaning of the statute as applied to these cases appears to this court to be perfectly clear, no practice inconsistent with that meaning can have any effect. (Swift Co. *v.* United States, 105 U. S., 691, 695; United States *v.* Graham, 110 U. S., 619; United States *v.* Tanner, 147 U. S., 661.)"

In so far as this question is affected by the practice of the Post-Office Department standing alone, I think it comes fully within the principle laid down in the two cases lastly above cited. The law says the average weight shall be ascertained "by the actual weighing of the mails for * * * successive working days." The practice has been to weigh on Sundays, and yet when the average is to be ascertained Sundays are excluded from the divisor. This practice is not only clearly erroneous, but logically indefensible. If Sundays are not "working days," the law does not permit the mails to be weighed on Sundays; if they are "working days," their exclusion from the divisor renders the result of the computation false on its face. It may be conceded that the question whether "working day" is to be interpreted "week day" in this provision of the statute is not free from doubt, and if the practice of the Post-Office Department were consistent with one construction and inconsistent with the other, there might be room to apply the doctrine of Brown's and Philbrick's cases; but as it is consistent with neither, and can be defended, if at all, only by reading the words in one sense for one purpose and in another sense for another purpose there is no room for the application of any such doctrine.

The practice seems to have constituted, in fact, a sort of administrative legislation, intended to encourage the carrying of the mails on Sundays, and the most serious difficulty connected with the subject is to determine whether there has not been a legislative sanction of the practice by the Congress in its failure to change the method of computation when it reenacted the statute in 1905, for there can be no question that the practice of the Department in this respect was, or might have been, well known to the Congress, by reason of very full statements concerning it in public documents.

In Dollar Savings Bank *v.* United States, 19 Wall., 227, the court refused to hold that the Congress, by the reenactment of a statute, had adopted the construction placed upon it by the Department of the Government charged with its administration. The statute under consideration in that case (act of Congress of July 13, 1866, 14 Stat., 138) provided:

"That there shall be levied and collected a tax of 5 per cent on all dividends in scrip or money thereafter declared due, wherever and whenever the same shall be payable, to stockholders, policy holders, or depositors, or parties whatsoever, including nonresidents, whether citizens or aliens, as part of the earnings, income, or gains of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or Territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said tax, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid the said tax of 5 per cent: * * * *Provided*, That the tax upon the dividends of life insurance companies shall not be deemed due until such dividends are payable; nor shall the portion of premiums returned by mutual life insurance companies to their policy holders, nor the annual or semiannual interest allowed or paid to the depositors in savings banks or savings institutions, be considered as dividends."

It was contended that savings institutions were relieved from taxation by the proviso to this section; but the court held otherwise, and in reply to the argument based upon the practical construction placed upon the act, said (pp. 236–237):

"Our attention has been called to the fact that in 1867 and again in 1870 the Commissioners of Internal Revenue construed the proviso as exempting savings institutions from the tax upon all sums added to their surplus or contingent funds, and that the act of Congress of July 14, 1870, which reduced internal taxation, employed substantially the same language respecting savings banks as that contained in the act of 1866. In view of this, the plaintiffs in error argue that Congress required the Commissioner to prescribe what returns savings banks should make; that this made it his duty to put a construction on the law; that he did so, and held that such institutions were not required to return undistributed earnings carried to a surplus fund, and that after this practical construction had been made and acted upon more than three years Congress reenacted the tax, reduced in amount, in the same words. Hence, it is inferred the construction given by the Commissioner was adopted. It is, doubtless, a rule that when a judicial construction has been given to a statute the reenactment of the statute is generally held to be in effect a legislative adoption of that construction. This, however, can only be when the statute is capable of the construction given to it, and when that construction has become a settled rule of conduct. The rule, we think, is inapplicable to this case. In the first place, the decisions of the Internal Revenue Commissioner can hardly be denominated judicial constructions. That officer was not required by the law to prescribe what returns savings banks were required to make. That was prescribed by the act of Congress itself, and he had no power to dispense with the requisition. There is therefore no presumption that his decisions were brought to the knowledge of Congress when the act of 1870 was passed. And again, the construction he gave is an impossible one, for, as we have seen, it makes the proviso plainly repugnant to the body of the section.

"We are constrained, then, to hold that the act of Congress does impose upon the plaintiffs in error the tax, to recover which the present suit was brought."

This opinion would probably be decisive of the present question were it not for some more recent decisions of the court. In New York, New Haven and Hartford Railroad Company *v.* Interstate Commerce Commission (200 U. S., 361, 399) it was contended that the prohibition of the act to regulate commerce and its amendments against undue preferences and discriminations ought not to be interpreted as applying against a carrier who was a dealer in commodities "because of an administrative construction long since given to the act by the Interstate Commerce Commission, the body primarily charged with its enforcement, and which has become a rule of property affecting vast interests which should not be judicially departed from, especially as such construction; it is asserted, has been impliedly sanctioned by Congress by frequently amending the act without changing it in this particular." The court said on this point (p. 401):

"* * * A construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the reenactment of the statute without alteration in the particulars constructed, when not plainly erroneous, must be treated as read into the statute. Especially do we think this rule applicable to the case in hand, because of the nature and extent of the authority conferred on the Commission from the beginning concerning the prohibitions of the act as to rebates, favoritism, and discrimination of all kinds, and particularly in view of the repeated declarations of the court that an exertion of power by the Commission concerning such matters was entitled to great weight and was not lightly to be interfered with."

These remarks were, strictly speaking, obiter dicta, for the court said immediately afterwards:

"The concessions thus made, however, are wholly irrelevant to the case before us."

In the case of United States *v.* Falk & Bro. (204 U. S., 143), however, the court seems to have come very near qualifying the decision in Dollar Savings Bank *v.* United States, above cited. In that case the Government contended that the practical construction given by the

Executive Department to a proviso in the tariff act of 1890 should control the interpretation of a similar proviso in the tariff act of 1897, and the court sustained that view, saying (p. 152):

"This, then, is our view: The Attorney-General having construed the proviso of section 50 of the act of 1890 as not restricted to the matter which immediately preceded it, but as of general application, and this construction having been followed by the executive officers charged with the administration of the law, Congress adopted the construction by the enactment of section 33 of the act of 1897, and intended to make no other change than to require as the basis of duty the weight of the merchandise at the time of entry instead of its weight at the time of its withdrawal from warehouse."

This aspect of the question has caused me some measure of doubt, but, upon careful consideration, I do not think it falls within the principle of the case last cited. The construction supposed to have been placed upon the statute in the practice of the Post-Office Department is not only "plainly erroneous," like the case suggested as an exception by the court in 200 United States, but is "an impossible one," as was that rejected by the court in 19 Wall. There is nothing to show that the construction by the Attorney-General sustained in the Falk case seemed to the court either "plainly erroneous," or "impossible." It must be furthermore remembered that in reenacting the statute in 1905, as in enacting it in 1873, the Congress only fixed a minimum to the number of days on which the Postmaster-General must have the mails weighed; he remained, as he had been previously, entirely at liberty to increase their number in his discretion, and he might therefore, as above noted, have made the weighing period extend through the entire year, or have supplemented the weighing by computations which would render practically nugatory the construction supposed to be involved in the practice. In other words, in 1905 the Congress may have felt justified in awaiting an administrative remedy for a faulty administrative practice and have only thought seriously of a legislative remedy two years later. The opinion purporting to have been given by Solicitor-General Phillips on October 31, 1884, is not only, as above stated, irregular in form, but so meager and inadequate in its statement and discussion of the questions involved that I can not recognize it as binding upon me in the premises. As to the decision of the Chairman of the Committee of the Whole, sustained upon appeal, to the effect that the proposed amendment requiring a divisor "not less than the whole number of days such mails have been weighed," made a change in existing law, I am not aware of any precedent holding such a decision to be binding upon this Department. The decision may be held, moreover, to have been correct without regard to the "construction" alleged by the Chairman to have been placed upon the law by "the proper officer."

It follows from what I have said that I consider the form or method in which the information obtained from weighing the mails in accordance with the act of March 3, 1905, shall be utilized a matter in your discretion, provided your action shall be directed to the ascertainment of what, according to your best judgment, would be an average weight as nearly true as may be practicable per day during a year of the mails carried as the statute lastly aforesaid directs, to be used as a basis for a yearly compensation to the carrier; of course the adequacy of such compensation is for the Congress, not for the Postmaster-General. Each of the two orders first above mentioned constituted, therefore, in strictness, a legal exercise of a discretion vested by law in the Postmaster-General. If, however, no further calculation is to be made beyond the addition of ascertained weights and division by the divisor selected, it seems obvious that Order No. 165 may lead to arbitrary and inequitable results. Order No. 412, upon the same assumption, will give, as the average weight per day during a year, the said average weight per day during somewhat more than one-fourth of a year; and there is no reason to suppose its results will be unjust or have any greater inaccuracy than is authorized and contemplated by the act of 1905.

Yours, respectfully, CHARLES J. BONAPARTE,
Attorney-General.

Mr. WANGER. My complaint of the words of the Attorney-General is confined to the sentence in the last paragraph, "Each of the two orders first above mentioned constituted, therefore, in strictness, a legal exercise of a discretion vested by law in the Postmaster-General." I can not complain of the words in the beginning of the paragraph, because they are coupled with the sound proviso—touching the method of utilizing information—*that the action of the Postmaster-General must be directed to what, in his best judgment, "would be an average weight as nearly true as may be practicable per day during a year of the mails carried as the statute lastly aforesaid directs, to be used as a basis for a yearly compensation to the carrier;"* but I am unable to reconcile myself to any process of reasoning which will lodge in an administrative officer authority to grant more than the maximum rate of compensation provided by law; and the vice of Order No. 44 of Postmaster-General Gresham and of Order No. 165 of Postmaster-General Cortelyou was that while they provided for a correct ascertainment of the average weight where the mails were carried on every one of the 35 or 105 days of the weighing period, they granted seven-sixths of the maximum pay for the service on routes to a company which only performed service six days in the week, giving a preference to those who rendered the least service to the Government, and an excess of legal compensation.

Let us consider the practical effect of the method of ascertainment of average weight under Orders 44 and 165, using the illustration of the Attorney-General that a total weight of 365,000 pounds carried over a route in a year means an average of 1,000 pounds per day in that year, no matter on how many or on how few days the mails are actually carried. Where the carrying is done in seven days of each week and the weighings are on each day you get the correct 1,000 pounds average, and the railway carrier is paid the maximum compensation. How can any carrier earn any more than that legal compensation for that service by any legerdemain of mathematics?

According to the practice of the Department, worked out under Orders 44 and 165, if the mails are only carried six days in the week you divide the 365,000 pounds by 313 and get an average of 1,166 pounds per day for each working day in the year, and in the latter instance pay the carrier upon the basis of 365 times 1,166, or for carrying 425,590 pounds in the year. This pay is for 365,000 pounds of mails carried, and for 60,590 pounds having no existence except in the basis of compensation, but for which just as good money is paid as if those 60,590 pounds had been mail matter.

If those orders, 44 and 165, had contained the further provision that where mails are only carried six days in the week, the average per day for the year should be found by taking only six-sevenths of the average for the weighing period, they would have been unexceptionable except as being less simple and clear than Order No. 412.

Mr. MURDOCK. May I ask the gentleman a question?

Mr. WANGER. Certainly; right here and now.

Mr. MURDOCK. There was so much confusion here when the Clerk read that amendment that I would like you to tell the House what your amendment proposes to do. In that amendment do you propose to make it apply to all the four sections, or to go back to the four sections in the quarterennial way?

Mr. WANGER. I am very glad the gentleman asked the question. In the third section the mails were weighed last year; their weights are ascertained in accordance with Order No. 412, of Postmaster-General Meyer. In the second section they are to be weighed this year in accordance with that order, and under this appropriation and these ascertainments of weight in these two sections of the country the payment will be in accordance with this weighing. But in the two other sections of the country, entitled under this item to relatively one-half of the $44,000,000 appropriated, the ascertainment of their daily averages is on the basis of a computation which the Attorney-General has condemned and the Postmaster-General has superseded. In other words, it will give to the two latter sections a percentage estimated by the Postmaster-General as being 9 or 10 per cent above the maximum rate of pay provided by law for the service performed.

Mr. MURDOCK. Now, right there. You cover that in your amendment to the two divisions.

Mr. WANGER. That is true.

Mr. MURDOCK. Do you stop there? Is that the extent of your amendment?

Mr. WANGER. I provide that no part of the appropriation in these two divisions in excess of six-sevenths of the amount ascertained by the weighing in 1905 and 1906, when these weighings were made, shall be paid until the weights have been readjusted in accordance with Order 412, or until it shall have been finally decided by law that the railway companies in those two sections, 1 and 4, are entitled to pay according to the old ascertainment during the next fiscal year.

The gentleman from Tennessee proceeded further and referred to the facts——

Mr. MOON of Tennessee. Will the gentleman from Pennsylvania allow me to correct him? He is referring to the speech of the gentleman from Missouri [Mr. LLOYD].

Mr. WANGER. I beg pardon, and thank my friend for the correction. That was an inadvertence. I did refer to the gentleman from Missouri [Mr. LLOYD], who suggested that no suits had been brought or threatened and dramatically called upon the chairman of the Committee on Expenditures in the Post-Office Department to investigate the Department and ascertain if there was anything wrong in it. I was very desirous of having the gentleman's legal opinion as to what was the proper action in the premises, the method of ascertaining the legal rights of the Government, and the action to be taken; but he declined, or at least failed, to throw any light upon those phases of the question. Now, at first blush, it might seem as if the administrative officers of the Government, having settled the accounts and fixed the amounts payable to each carrier for a four-year period, however erroneous the ascertainments or payments may have been, they having been voluntary by the Government, there would be no redress either by recovery of payments already made or by the withholding of payments for services rendered recently or hereafter, yet such does not seem to be the law, which is declared in the opinion, the major portion of which I shall insert, delivered in the case of Wisconsin Central Railroad Company *v.* United States, reported in 164 U. S., pages 205, etc., by Chief Justice Fuller, as follows:

* * * * * * *

Some reliance is placed by appellant on departmental construction, but we may dismiss that contention with the observation that we do not consider the true construction as doubtful, and that the depart-

mental construction referred to was neither contemporaneous nor continuous. (United States v. Alabama Southern Railroad, 142 U. S., 615; United States v. Healey, 160 U. S., 136.)

We agree entirely with the Court of Claims that the terms and conditions imposed on this grant embraced the condition that the mail should be carried at such rates as Congress might fix, and that section 13 of the act of July 12, 1876 (c. 179, 19 Stat., 78), was applicable. The item of $16,343.48 was properly disallowed, as was also the item of $12,532.43, unless the latter was recoverable by reason of some ground of objection to its extinguishment by the application of the sums unlawfully paid to and received by the company.

And as to that it is insisted that such application can not be made because it was not competent for the Postmaster-General to withhold the moneys thus paid without authority of law, as the previous directions to make the payments were decisions binding on the Department; because the payments were voluntarily made on due consideration and deliberation and the accounts settled, and because no counterclaim was filed.

The Postmaster-General in directing payment of compensation for mail transportation, under the statutes providing the rate and basis thereof, does not act judicially, and whatever the conclusiveness of executive acts so far as executive departments are concerned, as a rule of administration, it has long been settled that the action of executive officers in matters of account and payment can not be regarded as a conclusive determination when brought in question in a court of justice. United States v. Harmon, 43 Fed. Rep., 560, by Mr. Justice Gray; S. C., 147, U. S. 268; Hunter v. United States, 5 Pet., 173; United States v. Jones, 8 Pet., 387; United States v. Bank of Metropolis, 15 Pet., 377.)

In the latter case, which was a suit upon negotiable drafts accepted by the Postmaster-General (the authority to do so being assumed for the purpose of the case), and which was decided after the passage of the act of July 2, 1836 (c. 270, 5 Stat., 80, 83), whose seventeenth section was carried forward as section 4057 of the Revised Statutes, Mr. Justice Wayne, delivering the opinion of the court, discussed the power of a succeeding Postmaster-General to revise the action of his predecessor as to credits, as follows:

"The third instruction asked the court to say, among other things, if the credits given by Mr. Barry were for extra allowances, which the said Postmaster-General was not legally authorized to allow, then it was the duty of the present Postmaster-General to disallow such terms of credit. The successor of Mr. Barry had the same power, and no more, than his predecessor, and the power of the former did not extend to the recall of credits or allowances made by Mr. Barry, if he acted within the scope of official authority given by law to the head of the Department. This right in an incumbent of reviewing a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation and to cases of rejected claims in which material testimony is afterwards discovered and produced. But if a credit has been given, or an allowance made, as these were, by the head of a Department, and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to to construe the law under which the allowance was made and to settle the rights between the United States and the party to whom the credit was given.

"It is no longer a case between the correctness of one officer's judgment and that of his successor. A third party is interested, and he can not be deprived of a payment on a credit so given, but by the intervention of a court to pass upon his right. No statute is necessary to authorize the United States to sue in such a case. The right to sue is independent of statute, and it may be done by the direction of the incumbent of the Department. The act of July 2, 1836, entitled 'An act to change the organization of the Post-Office Department,' is only affirmative of the antecedent right of the Government to sue, and directory to the Postmaster-General to cause suits to be brought in the cases mentioned in the seventeenth section of that act. It also excludes him from determining, finally, any case which he may suppose to arise under that section. His duty is to cause a suit to be brought. Additional allowances the Postmaster-General could make under the forty-third section of the act of March 2, 1825 (3 Story, 1985); and we presume it was because allowances were supposed to have been made contrary to that law that the seventeenth section of the act of July 2, 1836, was passed. In this last the extent of the Postmaster-General's power, in respect to allowances, is too plain to be mistaken.

"We can not say that either of the sections of the acts of 1825 and 1836 just alluded to covers the allowances made by Mr. Barry to Reeside. But if the Postmaster-General thought they did and that such a defense could have availed against the rights of the bank to claim these acceptances as credits in this suit, the same proof which would have justified a recovery in an action by the United States would have justified the rejection of them as credits when they are claimed as a set-off."

The view thus indicated, that executive decisions in cases like the present are not binding on the courts, has been repeatedly affirmed and steadily adhered to. (Gordon v. United States, 1 C. Cls., 1; McElrath v. United States, 12 C. Cls., 201; Duval v. United States, 25 C. Cls., 46; Steele v. United States, 113 U. S., 128; United States v. Burchard, 125 U. S., 176; United States v. Stahl, 151 U. S., 366.) And it has been often applied in the instance of the improvident issue of patents. (United States v. Stone, 2 Wall., 525; United States v. Minor, 114 U. S., 233; Mullan v. United States, 118 U. S., 271; Wisconsin Railroad Co. v. Forsythe, 159 U. S., 46.)

In Steele v. United States, the Navy Department, in contracting with the claimant for certain work upon vessels, delivered to him certain old materials at the agreed price of $2,000, which was considerably less than the true value. In his suit for payment on the contract it was contended that the delivery of these materials to him at an agreed price was without warrant of law, and that the materials having been disposed of should be accounted for by the claimant at their true value. This contention was sustained, and this court said:

"The fact that the account of the appellant was settled by the officers of the Navy Department, by charging him with the value of the old material at $2,000, is no bar to the recovery of its real value by the Government. The whole transaction was illegal, and appellant is chargeable with knowledge of the fact."

In United States v. Burchard, the claimant, an engineer officer, retired October 26, 1874, and entitled to half sea pay, was paid from said date up to April 1, 1878, at a higher rate, whereby he received $425 in excess of that allowed by law, his pay at that rate being passed from time to time by both the disbursing officers in the Navy Department and by the accounting officers. After April 1, 1878, he was paid at a lower rate, which this court held to be the legal rate. He brought suit for the difference after 1878, and the Government counterclaimed for the $425 paid to him prior to that time. His petition was dismissed, and the court held the Government could recover the overpayment for the prior period. Mr. Chief Justice Waite, speaking for the court, observed that in no event was he entitled to more than half sea pay, and that all over that which he got was by mistake of the accounting officers, and said:

"It only remains to consider whether the amount which has thus been paid, or as much thereof as is embraced in the counterclaim, can be recovered back in this action, and we are of the opinion that it can. The action was brought by Burchard to recover a balance claimed to be due on pay account from the date of his retirement. He had been paid according to his present claim until April 1, 1878, and consequently there was nothing to complain of back of that date. But in reality the account had never been closed, and was always open to adjustment. Overpayments made at one time by mistake could be corrected and properly charged against credits coming in afterwards. His pay was fixed by law, and the disbursing officers of the Department had no authority to allow him any more. If they did, it was in violation of the law, and he has no right to keep what he thus obtained. Whether the Government can in any case be precluded from reclaiming money which has been paid by its disbursing and accounting officers under a mistake of law is a question which it is not now necessary to decide any more than it was in McElrath v. United States (102 U. S., 426, 441), when it was suggested. This is a case where the disbursing officer, supposing that a retired officer of the Navy was entitled to more than it turns out the law allowed, have overpaid him. Certainly under such circumstances the mistake may be corrected."

In United States v. Stahl, the claimant, a naval officer, upon a difference of opinion as to the law, had been overpaid in the grade then occupied by him, and sued for a deficiency claimed to exist in his previous grade. This court sustained his contention as to the previous grade and held that he had been entitled in that grade to the increased compensation, but that the excessive payments which had been made to him in the latter grade should be deducted from any sum which might be found due him in the former.

In Mullan v. United States, a suit to vacate a patent which had been granted for certain coal lands, the court held that the mistake was one of law, but that nevertheless, it having been committed and the patent given for lands which the land officers were not authorized the patent, the patent could be annulled by the court. And Mr. Chief Justice Waite said:

"It is no doubt true that the actual character of the lands was as well known at the Department of the Interior as it was anywhere else, and that the Secretary approved the lists not because he was mistaken about the facts, but because he was of opinion that coal lands were not mineral lands within the meaning of the act of 1853, and that they were open to selection by the State; but this does not alter the case. The list was certified without authority of law, and, therefore, by a mistake against which relief in equity may be afforded. As was said in United States v. Stone (2 Wall., 525, 535): 'The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But one officer of the Land Office is not competent to cancel or annul the act of his predecessor. That is a judicial act and requires the judgment of a court.'"

In Wisconsin Central Railroad Company v. Forsythe, which was an action of ejectment to recover certain lands claimed to have been included within its grant, but which defendant insisted were outside of its grant and subject to private entry, this court said:

"But further, it is urged that this question of title has been determined in the Land Department adversely to the claim of the plaintiff. This is doubtless true, but it was so determined, not upon any question of fact, but upon the construction of the law; and such matter, as we have repeatedly held, is not concluded by the decision of the Land Department."

As a general rule, and on grounds of public policy, the Government can not be bound by the action of its officers, who must be held to the performance of their duties within the strict limits of their legal authority, where by misconstruction of the law under which they have assumed to act, unauthorized payments are made. Whiteside v. United States (93 U. S., 247); Hawkins v. United States (96 U. S., 689), and cases before cited. The question is not presented as between the Government and its officer, or between the officer and the recipient of such payments, but as between the Government and the recipient, and is then a question whether the latter can be allowed to retain the fruits of actions not authorized by law, resulting from an erroneous conclusion by the agent of the Government as to the legal effect of the particular statutory law under or in reference to which he is proceeding.

Section 4057 of the Revised Statutes reads:

"In all cases where money has been paid out of the funds of the Post-Office Department under the pretense that service had been performed therefor, when, in fact, such service has not been performed, or as an additional allowance for increased service actually rendered, when the additional allowance exceeds the sum which, according to law, might rightfully have been allowed therefor, and in all other cases where money of the Department has been paid to any person in consequence of fraudulent representations, or by the mistake, collusion, or misconduct of any officer or other employee in the postal service, the Postmaster-General shall cause suit to be brought to recover such wrong or fraudulent payment or excess, with interest thereon."

Undoubtedly the word "mistake," as used in this section, includes an erroneous conclusion in the construction or application of a statute. And, this being so, as the duty is devolved on the Postmaster-General to cause suit to be brought where money has been illegally paid by reason of misconstruction or misapprehension of the applicable law, it follows that he must be regarded as empowered to reconsider prior decisions to determine whether such a mistake has been committed or not. If, in his judgment, money has been paid without authority of law, and he has money of the same claimant in his hands, he is not compelled to pay such money over and sue to recover the illegal payments, but may hold it subject to the decision of the court when the claimant sues. (United States v. Carr, 132 U. S., 644; Gratiot v. United States, 15 Pet., 336; Steele v. United States, United States v. Burchard, United States v. Stahl, supra.) And in that way multiplicity of suits and circuity of action are avoided.

It is unnecessary to go into a discussion of the exceptions which may exist between private parties to the rule that moneys paid through mistake of law can not be recovered back.

This branch of the case was disposed of by the Court of Claims on the authority of Duval v. United States (25 C. Cl., 46). It was there held that "the items of the several statements upon which the Sixth Auditor certifies balances due for carrying the mails ordinarily, and in the absence of special circumstances may be regarded as running accounts, at least while the parties continue the same dealings between themselves; and that money paid in violation of law upon balances certified by the accounting officers generally may be recovered back by

counterclaim or otherwise where no peculiar circumstances appear to make such recovery inequitable and unjust." The mistake was, indeed, treated as one of fact, the Post-Office officials erroneously assuming, through oversight, that the road in question had not been aided by grants of land, but the governing principle in the case before us is the same.

Reference was made to Barnes *v.* District of Columbia (22 C. Cl., 366, 394), wherein it was ruled, Richardson, C. J., delivering the opinion, that "The doctrine that money paid can be recovered back when paid in mistake of fact and not of law does not have so general application to public officers using the funds of the people as to individuals dealing with their own money where nobody but themselves suffer for their ignorance, carelessness, or indiscretion, because in the former case the elements of agency and the authority and duty of officers, and their obligations to the public, of which all persons dealing with them are bound to take notice, are always involved." We concur in these views, and are of opinion that there is nothing on this record to take the case out of the scope of the principle that parties receiving moneys illegally paid by a public officer are liable ex æquo et bono to refund them.

The petition sets forth, among other things, that the Postmaster-General wrongfully and unlawfully withheld the $12,532.43 out of moneys due petitioner, which was, therefore, entitled to recover the full amount; and to each and every allegation of the petition the Government interposed a general traverse. It is now said that a counterclaim or set-off should have been pleaded, but the record does not disclose that this objection was raised below, while the findings of fact show that the entire matter was before the court for, and received, adjudication. Moreover, it has been repeatedly held that the forms of pleading in the Court of Claims are not of so strict a character as to require omissions of this kind to be held fatal to the rendition of such judgment as the facts demand. (United States *v.* Burns, 12 Wall., 246, 254; Clark *v.* United States, 95 U. S., 539, 543; United States *v.* Behan, 110 U. S., 338, 347; United States *v.* Carr, 132 U. S., 644, 650.)

Judgment affirmed.

Mr. Justice Peckham dissented on the question of the right of the Government to offset the alleged overpayments prior to July 1, 1883.

Mr. WANGER. Surely the Postmaster-General was conscious of the payment of money in excess of legal compensation for carrying the mails on all routes to which the maximum rate of pay was allowed, and perhaps in some others, by mistake, when he established Order No. 412, and might have felt it his duty, after the accuracy and validity of that order was sustained by the Attorney-General, to bring suits to recover excessive payments, unless he was misled by the unfortunate sentence of the Attorney-General, and certainly if he has not been be will become conscious of many mistaken payments when he looks into the matter, as he undoubtedly will, and the question of the gentleman from Missouri [Mr. LLOYD] was therefore very pertinent, "Why has no suit been brought?"

There is a partial answer in the suggestion that perhaps there is another remedy. In the case cited the court says (p. 211):

> If in his (the Postmaster-General's) judgment money has been paid without authority of law and he has money of the same claimant in his hands, he is not compelled to pay such money over and sue to recover the illegal payments, but may hold it subject to the decision of the court when the claimant sues. (United States *v.* Carr, 132 U. S., 644; Gratiot *v.* United States, 15 Pet., 336.)

And in that way multiplicity of suits and circuity of action are avoided.

And there is another principle involved in the question of right of action against the railway mail carriers, or of withholding payment from them because of overpayments by mistake in the past, that is illustrated in the case of the United States *v.* Alabama Great Southern Railway Company (142 U. S., 615, etc.) in the following opinion of the court by Mr. Justice Brown:

OPINION OF THE COURT.

This case depends upon the construction to be given to section 13 of the act of July 12, 1876, which reads as follows: "SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only 80 per cent of the compensation authorized by this act." As it is admitted that the construction of so much of this road as lay within the States of Alabama and Mississippi, amounting to 263.85 miles, was aided by the proceeds of lands granted by the acts of Congress of June 3, 1856 (11 Stat., 17, c. 41), and August 11, 1856 (11 Stat., 30, c. 83), and the residue of such road lying within the States of Tennessee and Georgia, amounting to 31.6 miles, was constructed without such aid, the question is presented whether the Government is entitled to the transportation of the mail over the whole of such road at 80 per cent of the compensation provided for roads which have received no aid from Congress, or whether such percentage applies only to so much of the road as lies within the States of Alabama and Mississippi.

The difficulty arises from the fact that, by section 13, above quoted, all roads "constructed in whole or in part" by Congressional land grants are bound to carry at the reduced rates. These words, however, are susceptible of several constructions. They may mean such roads as received grants of land the proceeds of whose sales were sufficient to pay the entire or only the partial cost of their construction. In this case the language would be confined to the linear parts of such roads as receive the aid of the land grants—in the case under consideration only that part of the road lying in Alabama or Mississippi. Or they may mean that railroads any linear part of which received the aid of a land grant of Congress in its construction should be bound to carry the mails at a reduced rate over the entire line. This, which is doubtless the literal reading of the statute, supports the contention of the Government in this case. As applied to the particular facts of the present case, this interpretation of the statute would work no great hardship, since the unaided part of the road was but little more than 10 per cent of the entire line; but if the case were reversed and the unaided part amounted only to 10 per cent of the entire road, it would be equally within the words of the statute and the injustice of the construction would become clearly apparent, especially in the case put in the opinion of the learned judge of the court below, if there were a parallel rival road, unaided by a Congressional grant, receiving the full compensation allowed by law. It would also result from this that if there were two separate roads forming a continuous line, one of which was aided and the other unaided by a land grant, each receiving its appropriate compensation, and these roads were subsequently consolidated, the aided portion would draw after it its own compensation at the reduced rate and would compel it to be applied to the whole line.

But these words are still susceptible of a third construction, viz, that any railroad, the entire line of which or only certain linear portions of which had been constructed by a Congressional land grant, should receive the reduced rate properly proportioned to the part which had received such aid; and that, as to the unaided portion, it should receive the full compensation allowed by law. This was the construction given to it by the Postmaster-General and by the accounting officers of the Treasury at the time the act was passed, and the Alabama and Chattanooga Railroad Company and its successor, the appellee, was, and continued to be, paid upon that basis from 1876 to 1885, by six Postmasters-General, when, in 1885, the then incumbent of the office reversed the rulings of his predecessors, and not only subjected the entire line to the reduced rates, but made such construction retroactive and enforced payment of what the road had for nine years received under the prior construction.

We think the contemporaneous construction thus given by the executive department of the Government, and continued for nine years through six different administrations of that department—a construction which, though inconsistent with the literalism of the act, certainly consorts with the equities of the case—should be considered as decisive in this suit. It is a settled doctrine of this court that, in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and, if such construction be acted upon for a number of years, will look with disfavor upon any sudden change whereby parties who have contracted with the Government upon the faith of such construction may be prejudiced. It is especially objectionable that a construction of a statute favorable to the individual citizen should be changed in such manner as to become retroactive, and to require from him the repayment of moneys to which he had supposed himself entitled and upon the expectation of which he had made his contracts with the Government. These principles were announced as early as 1827 in Edwards' Lessee *v.* Darby (12 Wheat., 206, 210), and have been steadily adhered to in subsequent decisions. (United States *v.* State Bank of North Carolina, 6 Pet., 29, 39; United States *v.* Macdaniel, 7 Pet., 1; Brown *v.* United States, 113 U. S., 568; United States *v.* Moore, 95 U. S., 760, 763.)

The construction we have given to this act is also in harmony with that given to the Pacific Railroad act of 1862 in United States *v.* Kansas Pacific Railway Company (99 U. S., 455), and the Thurman Act of May 7, 1878, in the United States *v.* Central Pacific Railroad Company (118 U. S., 235).

There was no error in the judgment of the Court of Claims, and it is therefore affirmed.

So that while the Supreme Court in this case sustained the modern interpretation of the statute as literal, it declared the retroactive provision as harsh and justified standing by the earlier administrative instruction, just as I am inclined to think it would do if the Postmaster-General was to bring suit to recover any payments made prior to the adoption of this Order 412. But as to what the railway companies may be earning since that time a different principle is involved, as every contract was subject to future orders, and as to what they will earn in the next fiscal year an entirely different principle is involved from what would be involved in a suit to recover for past payments which they undoubtedly believe themselves entitled to receive. So that the provisions of my amendment, containing nothing radical or revolutionary or at war with any principle of law or of justice, as it seems to me, can be safely adopted.

In further reply to the inquiry of why the Postmaster-General has done nothing more than apply Order 412 to the weighings subsequent to its adoption, I beg to ask how can Congress be absolved from responsibility, if there is any point in that inquiry, if we fail now to take action limiting payments to be made in the next fiscal year for which we are now appropriating money to what we believe is all that is legally due for the service? Are we in this appropriation to say it may be inequitable, it may be illogical, that in one-half of the country the maximum rate shall mean 100 per cent of the amount of compensation specified by law, but nevertheless in the other half of the country we will pay 109 or 116 per cent of the same maximum rate because a mistake has been made heretofore? We may excuse the past on account of the hiatus possible and unwisdom of raking up the errors of the past, but how can we justify ourselves if we believe in the accuracy of Order 412, but continue to provide for payment for the future upon a basis we condemn as illegal and perpetuate this unequal method of excessive compensation? Mr. Chairman, I ask permission to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. WANGER. While fully persuaded of the soundness of reasoning of the Attorney-General, I yet realize that there is another side, which was most ably presented by that efficient and conscientious public servant, Second Assistant Postmaster-

General Shallenberger, in his letter to the Postmaster-General printed in the hearings in January, 1907, by the Committee on the Post-Office. Let the committee determine whether he and his predecessors were misled by sophisms or were correct, as this amendment will enable the court of last resort to determine. And to that decision we shall all bow, glad in any result that the controversy has been ended and the law vindicated.

Mr. MURDOCK. Mr. Chairman, in the matter of the divisor, the executive order No. 412 does not, in my opinion, bar the past, The word "hereafter" is absent from the order, and the only element of futurity in it is in the word "shall."

Last year we applied by legislation two flat reductions in railway-mail pay on average weights above 5,000 pounds. The Department had no embarrassment whatever in applying those flat reductions to all the four sections of the country, but when the Department came to apply the corrected divisor, it applied it only to the section being weighed, as this bill applies it to the section now being weighed and the section weighed last year, and omitted the two other sections. The gentleman from Pennsylvania now, by an amendment, seeks, as I understand it, to make the Department correct the divisor to the two other sections which were weighed two and three years ago.

Mr. WANGER. Put them all on a parity.

Mr. MURDOCK. Put all four sections on a parity. Frankly I do not see how we in Congress can do it in light of how Congress refused to act last year. I do not believe, from what I have read from the Attorney-General, from the Department, and from what I have listened to on the floor of this House, that Congress has anything to do with the divisor or can reach the divisor in any way.

Last year I offered an amendment similar in form to this one proposed to-day, believing myself wholly within order. The Chairman of the Committee of the Whole at that time ruled it out of order. I found myself estopped from any remedial proceeding. I appealed from the decision of the Chair. I had 17 votes with me and about 60 against me. That ruling seemed to appeal to the membership of this House as being perfectly sound. And if I am to accept the opinions of the legal giants of this country, I must think it was because the Attorney-General in saying that the divisor was wrong and should be corrected took particular pains to approve the decision here in the House, that the limitation I sought to put upon an appropriation was out of order.

Mr. WANGER. Mr. Chairman, I concede that while we can not change existing law in this bill under the rules of the House, where they are enforced, yet there is nothing to compel us to appropriate all the money that may be required by law. Therefore we may appropriate less than the full amount authorized by law.

Mr. MURDOCK. Certainly.

Mr. WANGER. Why, when a demonstration has been made that railroad companies are getting 9 to 10 per cent in excess of the maximum compensation fixed by law, is there any use in having sophistry about the subject? Does not that show that the ascertainment is illegal? Does the gentleman think it is in the province of any Executive Department of this Government by order, by method of divisor, or any other feature in calculation to provide a rate of compensation above that fixed by law?

Mr. MURDOCK. Not at all, and I want to ask the gentleman in return if he says I have been indulging in any sophistry in the question of the divisor.

Mr. WANGER. Not at all; but the gentleman has referred to labored statements to which I referred, about its being in the discretion of the Postmaster-General to apply one method or another in ascertaining the average weight of mails carried per day.

Mr. MURDOCK. That is exactly what I am coming to now.

Mr. WANGER. My contention is that no matter what form or manner of computation is used it must be, as the Attorney-General states, directed to the ascertainment of true average weight for every day in the year.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MURDOCK. I ask unanimous consent for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MURDOCK. Now, the Attorney-General rules that the old divisor was wrong. He does not rule that the old divisor was wrong on the plain proposition and the sensible proposition that you can not take seven days' aggregate, put them into a dividend, take six for a divisor, and get a fair average by dividing the seven by six for a quotient. No, he does not; but he goes further and into a new field, and says that the Department violated the old law in that it weighed mails on Sunday at all.

Mr. WANGER. Oh, no.

Mr. MURDOCK. He does.

Mr. WANGER. He does not decide anything of that kind.

Mr. MURDOCK. He does, and makes that a particular point in the decision, if the gentleman will read it.

Mr. WANGER. He decided that the Department did wrong in putting the Sunday weights into the Monday weighing and then using six as a divisor.

Mr. MURDOCK. I think if the gentleman will read that decision he will find that it was contended there was no provision in law for weighing the mails on Sunday at all.

Mr. WANGER. Oh, no; my friend has entirely misconceived the scope of the Attorney-General's opinion.

Mr. MURDOCK. Not at all. The Attorney-General has ruled that it is a matter of discretion with the Postmaster-General—that the Postmaster-General could, under the old system, use a short divisor; that he can under a more recent order use a corrected and a full divisor. He has also held in his opinion that it was perfectly correct for the chairman of the Committee of the Whole House of Congress to overrule any attempt to limit that appropriation in similar form, as the gentleman from Pennsylvania [Mr. WANGER] now seeks to do. It seems to be wholly in the hands of the Department. The Department can apply this new divisor to this one section this year and the other section and cease there. It can by a simple matter of computation apply that corrected divisor to all other sections to-day, and make it immediate, as I think it should. It can, if it wishes, go on back, I suppose, and collect the incredible amount of money which has been in the nature of an overcharge for thirty-five years; it seems wholly in the hands of the Department. It does not rest with Congress. Some of you gentlemen remember that I made every parliamentary attempt that is possible under the rules to get some action from Congress on this subject last year. I did not indulge in demagogy. I did not go to an excess in speech or indulge in an accusation against anybody. I had to get up and continually resent the charge that I was accusing some one of looting the Treasury.

Mr. WANGER. Will the gentleman permit another interruption?

Mr. MURDOCK. No; not right here. Let me go on.

Now, the gentleman from Pennsylvania [Mr. WANGER] proposes to come in and apply a limitation to this appropriation. I doubt, to some extent, his wisdom. I want to tell him why, and I hope I will have time in which to do it.

Mr. WANGER. Does the gentleman mean my personal wisdom generally or as involved in the proposition?

Mr. MURDOCK. The gentleman's wisdom as a Representative from Pennsylvania.

Mr. WANGER. That is pretty comprehensive.

Mr. MURDOCK. Under the present order of the Postmaster-General, the power rests wholly in the Department to apply this divisor.

The CHAIRMAN. The time of the gentleman from Kansas has again expired.

Mr. WANGER. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for ten minutes longer.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. WANGER. Now, Mr. Chairman, before my friend impeaches my wisdom, instead of confining himself to the proposition——

Mr. MURDOCK. I wish I had had the gentleman with me last year.

Mr. WANGER. I will say that I was against the proposition of the gentleman last year. So long as you proposed to pay the companies that only carried mail six days 116 per cent of the compensation that they would get if they carried the mail on the seventh day, the proposition was so inequitable that I could not help but reject it; and, unfortunately, my perceptive faculties were not sufficiently keen to then realize the force of the gentleman's logic, and how a rule might be applied with just effect, and that the error of his position was in failing to apply such rule to secure an average weight per day instead of per "working day," and further to see that the vice contained in it was not as it applied to the roads that were carrying mails on seven days in the week, but was in it as applied to the roads that only carried mail six days in a week. The Postmaster-General says that 365,000 pounds in a year gives an average of 1,000 pounds a day. As that is unanswerable, so, I submit, that a form of divisor which by a month of weighing makes that total an average of 1,166 pounds per day——

Mr. MURDOCK. Yes. And the old divisor is wrong and was wrong; and how can this House, I will ask the gentleman from Pennsylvania, in the face of a former ruling of its chairman under the rules, taking into consideration the ruling of the

Attorney-General, ask a change in the divisor? How can this House legislate on it without——

Mr. WANGER. By paying what is conceded to be the maximum of lawful pay and withholding what exceeds that.

Mr. MURDOCK. Now, what I wanted to say, and one of the purposes for which I arose, was this: Under the opinion of the Attorney-General, and under the practice of the Department now, there has been no change of law. The Department now is making, and will make in the next four years, a reduction of $4,000,000 in the annual pay to the railroads without any change of law. Under the opinion of the Attorney-General the Department makes that change of and in itself, without any grant of power from this body or any other body. If the Department has the right to make that change now, without any change of law, then the Department for thirty years, as I have contended in every address I have made to the House on the subject, disregarded the law. It paid the railroads a sum that it would probably be impossible to recover to-day because of its immensity. But what has happened? The railroads are combating the order. One of them has started in the Court of Claims a suit to defeat Order 412. The government of this country, as represented by the Department, whether it acts in its legislative or executive capacity—the Department retains over the railroads of this country the opportunity for recovery so long as there is no change of law. And when this Congress, or any other Congress, enacts into law the corrected divisor, it may close the door on possible recovery from the railroads. [Applause.]

Mr. OVERSTREET. Mr. Chairman, I insist upon a point of order.

The CHAIRMAN. The Chair will be glad to hear the gentleman upon the point of order.

Mr. OVERSTREET. In the first place, Mr. Chairman, I call the Chair's attention to the language in the amendment, which is in no wise a limitation, but a direction to withhold the payment of a certain proportion of pay which has been ascertained. Now, the law under which the pay for railway mail transportation is made, as the Chair understands, is the act of March 3, 1873, with certain amendments thereafter. Under the law fixing the pay and the manner of its ascertainment the appropriations are made from year to year. The amendment before the committee directs that only six-sevenths of the amount ascertained pursuant to the law shall be paid until certain things have been done. If the law has been followed, if the weighings have been taken according to the law, then the appropriation should be made to meet the payments; and if not made, the carrying roads would have a right of action in the Court of Claims. It is not an amendment equivalent to an amendment to reduce the amount. An amendment to reduce the amount by so many hundred thousand dollars would undoubtedly be in order. The amendment directs the withholding of the payment. An amendment striking out all would be in order. An amendment directing the withholding the payment of the amount would not be in order, because not on all fours with the other suggested amendment. Now, another difference of this amendment, Mr. Chairman, is quite apparent. This is to bring within the scope of the so-called "Order 412" the payments on weighings which were had preceding the issuing of Order 412.

That is to say, that the roads in the New England division and in the Pacific Coast States division shall not be paid the full amount due them in the appropriations for the fiscal year 1909 until it has been demonstrated that they were underpaid or overpaid for the years 1905 and 1906. I wish to repeat and emphasize what I have just said. This appropriation, a portion of which the amendment proposes to withhold, is for the allowance for the fiscal year 1909. The proposed amendment seeks to withhold a part of that appropriation until certain computations have been made in years preceding the issuing of Order 412.

Now, the Attorney-General, in a recent decision, commented upon a point of order of similar character made in this House when this item of appropriation was under consideration for the current fiscal year. In volume 41 of the CONGRESSIONAL RECORD, page 3471, will be found the comment relating to the point of order which was then made, which sought to fix a method of computation in a similar way to that which is now being fixed by Order 412. The proposed amendment to which the point of order was then addressed was made before Order 412 had been promulgated, and the gentleman then occupying the chair sustained the point of order for reasons that are in the RECORD at page 3471—volume 41, CONGRESSIONAL RECORD. The Attorney-General afterwards, expressing an opinion on Order 412, used this expression:

> It has been held that where the meaning of a statute is doubtful or ambiguous, the practical construction placed upon it by the Department of the Government charged with its administration, if contemporaneous, uniform, and long-continued, although not deemed controlling on the courts, is to be treated with respect and will ordinarily be followed.

But in a later part of his decision, commenting again upon the action of the Chair in sustaining the point of order, the Attorney-General in his opinion uses this language:

> As to the decision of the Chairman of the Committee of the Whole, sustained upon appeal, to the effect that the proposed amendment requiring a divisor of not less than the whole number of days such mails have been weighed made a change in existing law, I am not aware of any precedent holding such decision to be binding upon the Department. This decision may be held to have been correct without regard to the construction alluded to by the Chairman to have been placed upon the law by the proper officer.

Now, since Order 412 was promulgated by the Postmaster-General, and the opinion on it by the Attorney-General, the Department has instituted a certain practice relative to ascertaining the rate of pay, and under that practice has not gone back to the year 1905 and 1906; and applying the proposition of the Attorney-General, therefore, to the practice of the Department having the control of the administration of law, the Chair should at least give respect, as the Attorney-General says, if it may not be controlled by it. I think that this amendment is obnoxious both to the former decision upon a similar point of order where the point was sustained and to the opinion of the Attorney-General; and for the third reason, that it is not a limitation, but is a direction to withhold part of what, under the practice, has been properly ascertained.

The CHAIRMAN. May the Chair ascertain from the gentleman if the present occupant of the chair supposes correctly that this amendment relates to the payment of the appropriation under this bill?

Mr. OVERSTREET. That is my understanding.

The CHAIRMAN. And the balance due for the years 1905 and 1906?

Mr. OVERSTREET. Balance due?

The CHAIRMAN. Whether there are balances due or not.

Mr. WANGER. Not at all.

Mr. OVERSTREET. I do not understand that. There are no balances; they have been paid.

Mr. STAFFORD. The appropriations for prior years would be available for the payment of any balances, if they were due.

Mr. WANGER. If the gentleman will pardon me, the payments out of this appropriation bill for the year 1909 in those two districts will be made, unless there is some action taken by Congress or by the executive department, pursuant to the weighing of 1905 in the one district and of 1906 in the other district; not for the services in those years, but for the services during the fiscal year 1909; and the appropriation is for that service.

The CHAIRMAN. May the Chair ask just what is the order of Postmaster-General Meyer, No. 412? No one has explained that to the committee.

Mr. WANGER. Order No. 412, dated June 7, 1907, reads:

> When the weight of mail is taken on railroad routes the whole number of days included in the weighing period shall be used as the divisor for obtaining the average weight per day.

Mr. STAFFORD. I may say, if the Chair will permit me to offer some elucidation of this subject, Order 412 has only been applied to that weighing district in which the mail was weighed last spring, and will be applied in the successive three districts of the country as the mails are weighed; and the purpose of this amendment is to extend it to two of those districts, which will be weighed in the year following this one and the year following that.

The CHAIRMAN. Then this amendment would not affect the ascertainment of the amount due for the carrying of the mail at all?

Mr. WANGER. Not at all.

The CHAIRMAN. Except as modified by the order of the Postmaster-General?

Mr. WANGER. The effect of this amendment would simply be on the payment out of appropriations.

Mr. MURDOCK. For this year?

Mr. WANGER. For the next fiscal year.

Mr. OVERSTREET. If the Chair will permit me to submit the proposition, on the basis that the law fixes the method of ascertaining the weight of mail, and fixes the weight of pay, the presumption is that Congress may make annual appropriations to meet those payments. Now, that is existing law. Supposing we offer an amendment with reference to that item of appropriation, providing that only 25 per cent of the amount found due shall be paid. Would not that be contrary to existing law, because existing law directs that the payments shall be in accordance with the total weight and the total mileage——

The CHAIRMAN. The Chair thinks it is within the power

of Congress to appropriate all or any portion of what may be due, and the Chair would like to have the attention of the committee.

Mr. GARDNER of New Jersey. Mr. Chairman, in order that we may understand just what that amendment does, my understanding is that under the orders of the Post-Office Department, as existing, whatever they were, the gentleman claims that, as measured by and under Order 412, the roads were overpaid in the years 1906 and 1907; and this is a proposition to withhold the money from them for services done under the new order, in 1909, until there is a readjustment under the new order; and if, measured by the new order, they were overpaid under the old order in 1906-7, then that amount shall be withheld in 1909. It operates positively to change the law, and would make Order 412 become retroactive.

The CHAIRMAN. The Chair would like to ascertain on that point. That is not the understanding of the Chair as to the amendment.

Mr. GARDNER of New Jersey. That is the exact effect of it, and it has no other purpose here.

Mr. GAINES of West Virginia. May we have the amendment again reported?

The CHAIRMAN. Without objection the Clerk will again report the amendment.

The amendment was again read.

Mr. WANGER. Mr. Chairman, the gentleman from New Jersey has stated what is most decidedly not the question involved in this amendment. Order No. 412 did not affect, could not affect, and did not pretend to affect the law as to compensation of the railway companies. There is nothing in this proposition to alter or change the law as affecting the compensation for the past or the present fiscal year.

The CHAIRMAN. May the Chair ask whether the gentleman contends that his amendment simply extends the operation of Order No. 412 throughout the United States instead of confining it to a particular locality?

Mr. WANGER. That would be the practical effect—to make its operation uniform throughout the United States.

Mr. STAFFORD. Will the gentleman yield?

Mr. WANGER. I will.

Mr. STAFFORD. Does the gentleman contend that his amendment is identical in effect with Order 412 as administered by the Department, following the decision of the Attorney-General? According to the decision of the Attorney-General, on those roads where they have but three days' service, where prior thereto the railroads received compensation based upon the divisor of ninety out of one hundred and five days' weighing, to-day, under that order, they would receive but three-sevenths of the divisor of one hundred and five, because the service was rendered only three days in the week.

Mr. WANGER. Not because the service was rendered only three days in the week.

Mr. STAFFORD. The gentleman's amendment provides for withholding compensation to the amount of six-sevenths, so you can not contend that your amendment is on all fours with Order No. 412.

Mr. WANGER. Order 412 provides for the payment of no more than the compensation fixed by law, and in its application this fiscal year extends to only one weighing section of the country. The next fiscal year will apply to two weighing sections of the country, and in the other sections—unless something is done by somebody, the manner of making payments goes on as it has heretofore—will be paid on the basis of 116.16 per cent of the compensation allowed by law.

Mr. MURDOCK. The Department can do that.

Mr. WANGER. Certainly the Department can do it; but if Congress distinctly refuses to act when it is confronted with the question squarely presented, why should the Department take any action?

Mr. HARDY. Mr. Chairman, as I understand the amendment—possibly there is some confusion; we do not always catch things correctly—I want to discard from the consideration of the question the two divisions, one weighed last year and one which has been or will be weighed this year. We have two other divisions weighed in 1905 and 1906. The Department has adopted a method of estimating the amount of mail carried, by which they, in effect, weigh the mail for seven days, add the result, and divide the sum by six, thereby giving an average larger than it ought to be. Everybody seems to agree that that was a wrong divisor in the beginning—1905.

Mr. WANGER. Oh, no; I do not think the railway companies concede that. [Laughter.]

Mr. HARDY. I believe the gentleman is right that far, but all the House seems to agree that the divisor ought to be seven. The amendment of the gentleman from Pennsylvania says that though they did not use the right divisor in the beginning they ought to do it in the future.

Mr. WANGER. That is it.

Mr. HARDY. And one reason urged against his amendment is that they have not done justice heretofore, and therefore they ought not to do justice now. The gentleman's amendment does not affect the two sections that are by the order of the Postmaster-General now divided by seven.

Mr. WANGER. Not at all.

Mr. HARDY. But we wish to make the Postmaster-General divide the other two sections also by seven. Now, the question is, as it seems to me, if Congress has passed a law and the Department has by a wrong divisor been paying an amount larger than it ought to pay, has an appropriation measure the right to restrict that payment and provide what they ought to pay? In other words, the gentleman's amendment proposes to restrict the amount paid to what ought to have been paid from the beginning of the weighing.

Mr. WANGER. No; not from the beginning of the weighing, but what ought to be paid during the coming fiscal year, according to the quantity of mail carried during the year.

Mr. HARDY. I was inaccurate; I mean just what the gentleman says. Not to go back and try to correct what was done in 1905 and 1906, but in the future, instead of criticising the Department, let the House go on record in favor of a just divisor.

Mr. WANGER. That is it.

Mr. CRUMPACKER. Mr. Chairman, I desire to submit a few observations solely upon the point of order, not upon the merits of the proposition. The proposition, it strikes me, is one that has a good deal of merit, but we are considering now purely a parliamentary question, and that is whether the amendment is in order under the rules of the House as a limitation upon an appropriation. It is hardly in the form of a limitation. It contains provisions directing the Postmaster-General to make a new ascertainment of weights.

Mr. WANGER. Oh, not at all.

Mr. CRUMPACKER. Then I have not the amendment in mind.

Mr. WANGER. Here it is.

Mr. CRUMPACKER. There may be amendments in the form of limitations, yet in substance embody legislation; in substance they may direct things to be done, and the Chair in looking at a question of order must determine the real effect of the amendment and not simply its form. The substance and not the form should control. Now, I gather from this discussion that under the law it was discretionary with the Postmaster-General prior to the making of Order 412 to adopt six or seven as the divisor, and when the mails were weighed in 1905 and 1906 in the two sections in controversy, those weighings were understood to control for a period of four years, and the Postmaster-General adopted six as the divisor in the process of ascertainment, probably an unjust thing; but I understand from this discussion that he had the right under the law and the exercise of his discretion to adopt that divisor. Therefore, it can not be said that there was anything illegal in the weighing of the mails, and in the ascertainment of the amounts to be paid under the weighing for either one of those years. That proposition, I think, is generally admitted in this discussion.

Mr. WANGER. Mr. Chairman, I do not think the gentleman was in when I made the proposition that there could be no form of divisor or any method of calculation adopted which would falsely give the average weight and thereby grant to a company compensation in excess of the compensation fixed by law.

Mr. CRUMPACKER. The gentleman now is talking from the standpoint of ethics and morals, and not of law.

Mr. WANGER. No.

Mr. CRUMPACKER. When a discretion is vested in a Department officer the Department officer may exercise that discretion, even though he exercise it unjustly. He may exercise it, possibly, in such a manner as not to carry out the real and best purpose of the law, and yet it is a valid exercise and one that the people and the Government will be governed by until it is changed. The gentleman's proposition is one of morals, and I admit the gentleman is right as a matter of morals, but as a proposition of law he is wrong.

Mr. WANGER. As a matter of law, the discretion of an executive officer will always be controlled when it is unjustly and improperly exercised, although the presumption will be in favor of its proper exercise.

Mr. CRUMPACKER. Oh, I decline to yield further, Mr. Chairman.

Mr. NORRIS. Will the gentleman yield to a question?

Mr. CRUMPACKER. Yes; to a question.

Mr. NORRIS. I want to ask the gentleman if he contends that the law as it exists permits the Department to use discretion in the selection of divisors, and is not that fixed by law, although there may be an uncertainty as to what the law is?

Mr. CRUMPACKER. That is admitted by everybody who has taken part in this discussion, and it is supported by the opinion of the Attorney-General, that the Postmaster-General did have the discretion to employ six as the divisor, instead of seven.

Mr. WANGER. I want the gentleman to except one when he says it is admitted by everybody where it produces a false ascertainment. I wish it to appear on this record that there is one Member of this House who distinctly repudiates that doctrine.

Mr. CRUMPACKER. It is likely the gentleman from Pennsylvania has already made that statement, and I say it is not good as a proposition of law. Whenever the law vests in a court power to decide a question, that power carries with it the right to decide wrong as well as right, and when a discretion is vested in an executive officer and that discretion is exercised it is final. I think that is the opinion of the Postmaster-General. It is good law; it is sound law, anyhow.

Mr. WANGER. That may be the law in Indiana, but, thank God, it is not the law in Pennsylvania.

Mr. CRUMPACKER. I think I ought not to yield further. I think I know more about the Pennsylvania law than the gentleman from Pennsylvania [Mr. WANGER] if he makes the assertion that the courts can only decide correctly in that State, that they have the power only to decide right, because human nature is frail and liable to err, even in Pennsylvania.

Mr. WANGER. My only contention is that an abuse of discretion and exercise of power not conferred by law may be restrained. I ought to add that the function of ascertaining average weights is ministerial.

Mr. GAINES of Tennessee. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired.

Mr. CRUMPACKER. I ask unanimous consent to proceed for two minutes, in order that I may make my point.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. CRUMPACKER. I just want to make my point and then stop. I do not care to use any more time.

Mr. GAINES of Tennessee. Does the gentleman argue that we can not control the discretion of the Postmaster-General?

Mr. CRUMPACKER. I do not argue any such thing. It is a question of applying the rules of the House. Congress can make any law it pleases; Congress has the power to make any direction or law respecting payments for carrying the mails that it chooses; but the question now is one of parliamentary procedure, of whether it can be done in an appropriation bill, a question of whether the Committee of the Whole, under the guise of a limitation, can propose an amendment which is pregnant with legislation that undertakes to control a discretion and directs things to be done which the law does not require to be done.

This amendment proposes that a certain amount of the appropriation shall be withheld until the Department reascertains the amount that is justly and morally due the railroad. It requires a reascertainment. It requires the application of Order 412 to two sections of the country that it would not be applicable to until the successive weighing periods arrive. Now, Mr. Chairman, I believe his amendment is obnoxious because it contains legislation. I want to put myself right on the main proposition. I believe the gentleman from Pennsylvania [Mr. WANGER] is morally right, from the statement I have heard. If there has been a sufficient investigation of the question now to enable the Committee of the Whole to intelligently act, and if it comes before us regularly, I will support him in his amendment; but I am now discussing this question clearly as one of parliamentary law.

Mr. SULZER rose.

The CHAIRMAN. For what purpose does the gentleman rise?

Mr. SULZER. I would like to be heard for a few moments.

The CHAIRMAN. The Chair is ready to rule, but will recognize the gentleman if he will confine himself to the point of order.

Mr. SULZER. Mr. Chairman, well, I would like to say a few words on the point of order. I am in favor of the amendment of the gentleman from Pennsylvania [Mr. WANGER] and, in my opinion, it is pertinent, not subject to a point of order, and should be adopted. We have heard a great deal of discussion every year for the past decade regarding the railway charges—very exorbitant charges—for carrying the mail of the United States, and according to the admitted facts the Government is paying to-day and has been paying for years one-sixth more than it ought to pay, quite an item in the aggregate.

The CHAIRMAN. The Chair does not think the gentleman is confining himself to the point of order. The Chair is prepared to rule on the point of order.

Mr. SULZER. Mr. Chairman, just a word more. In my opinion the point of order should be overruled, the amendment adopted, and I indulge the hope that the Department hereafter will weigh the mail properly, and see to it that the Government is not overcharged every year hundreds and hundreds of thousands of dollars.

The CHAIRMAN. The item in the bill is as follows:

For inland transportation by railroad routes, $44,000,000.

The Clerk will again read the amendment of the gentleman from Pennsylvania [Mr. WANGER].

The amendment was again read, as follows:

After the amendments in line 13, page 18, add:

"*Provided further*, That not exceeding six-sevenths of the amount ascertained pursuant to the weighing of the mail on any route in the year 1905 or in the year 1906 as the annual pay on such route for transporting the mail shall be paid out of the moneys hereby appropriated until such ascertainment shall have been readjusted in accordance with order of Postmaster-General Meyer No. 412, or until it shall have been finally determined by law that the first recited ascertainments are binding upon the Government for the ensuing fiscal year, notwithstanding any error or wrong in the basis of such ascertainments."

The CHAIRMAN. The point of order is made that the amendment is obnoxious to the rules of the House because effecting a change of existing law, and the question is whether the amendment is a limitation upon the appropriation merely or whether it, in fact, changes the law. If it be a limitation upon the appropriation, it is clearly within the power of the House, and the House may appropriate $44,000,000, or it may appropriate $22,000,000, or it may make no appropriation at all, for the carrying of the mail. It might appropriate the full sum provided by law, or it might appropriate a proportionate portion of the sum provided by law. Undoubtedly a decision upon the amendment is along very close lines.

Last year, upon the consideration of the post-office appropriation bill, the gentleman from Kansas [Mr. MURDOCK] offered the following amendment at this same place in the bill:

Provided, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of the divisor less than the whole number of days such mails have been weighed.

The occupant of the chair at that time, the gentleman from New Hampshire [Mr. CURRIER], being one of the most distinguished parliamentarians in the House, sustained the point of order, and in the course of his decision said:

The existing law has received a construction by the officers charged with the duty of administering it, and that construction the Chair feels bound to follow.

And then proceeded with the statement of his reasons that, in effect, the amendment then offered by the gentleman from Kansas would change the law and change the method of computing the amount due the railway companies. Undoubtedly that was the correct decision upon the proposition then before the House. To say that no part of that appropriation should be expended except upon a change of construction of the method of computation was, in effect, a change of law, though purporting to be a mere limitation.

But the present amendment is different. Since the ruling of last year the Department itself, without a change of law, has made a new construction of the existing law, and the present amendment does not propose to change the law in any respect, but is, as the Chair understands it, a mere direction to the disbursing officer of the Government that that officer shall not pay to exceed six-sevenths of the amount which otherwise he would pay until a further adjustment is ascertained either by the Department or, as could be by law, through the Court of Claims. It being within the power of the House to retain the whole of the amount due to the railroad company, it is clearly within the power of the House to retain any portion of the amount pending an adjudication and decision of the question as to the correct construction of the law as now made by the Department. The Chair, therefore, overrules the point of order.

Mr. SULZER. Mr. Chairman, I move to strike out the last word. I shall occupy the attention of the House for only a minute or two, to conclude what I was going to say a few moments ago. I am glad that the Chairman overruled the point of order, and trust this amendment will now be adopted. I think it will have a beneficial effect and go far to check an evil of long standing in weighing the mail. For years the Post-Office Department has been weighing mail matter in the interest of the railroads, and the latter have benefited to the extent of millions and millions of dollars. This discrimination against the Government should be stopped, and stopped now. I am reliably informed that the amount of money the Government pays to the railroads every year for carrying the mails

would duplicate all the mail cars in the country. The charges are excessive and the officials of the Department are responsible for it. In my judgment the Government is paying entirely too much for carrying the mails. The railroads do not pretend to charge shippers what they charge the Government for carrying the mail, and why the Government should be compelled to pay the railroads more is beyond my ken. It would be very much cheaper for the Government to buy the mail cars and pay the railroads for hauling them. I can not understand the excessive railroad charges for mail, never have understood it, and have never heard a satisfactory explanation of it. But let us adopt this amendment and endeavor to remedy the evil to some extent. That is the best we can do now, apparently.

Mr. Chairman, what I am saying now is for the purpose of calling the attention of the officials of the Post-Office Department to the startling facts in the matter, and I hope that hereafter the Post-Office officials will make better terms with the railroads regarding the pay for transporting the mails, and save the taxpayers millions of dollars every year. In my judgment, if the Post-Office officials were anxious to serve the best interests of the taxpayers, they would be able to make contracts with the railroad companies to carry the mails for 50 per cent of what is now being paid. As I said, the railroads are now and have been getting enough for carrying the mails every year to duplicate every mail car all over the United States. The $44,000,000 appropriated here is just about twice what it should be. The difference is a clear subsidy to the railroads. I hope hereafter that the Post-Office officials will make better terms with the railroads; and if they want to do so, I have no doubt they can do it. [Applause.]

Mr. OVERSTREET. Mr. Chairman, I move that all debate on the paragraph and amendments thereto be closed in ten minutes.

The question was taken, and the motion was agreed to.

The CHAIRMAN. The Chair will recognize a gentleman on each side for five minutes.

Mr. OVERSTREET. I would be glad that the gentleman from Minnesota [Mr. STEENERSON], a member of the committee, be recognized for five minutes.

Mr. GAINES of Tennessee. I am on this side.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota, a member of the committee.

[Mr. STEENERSON addressed the committee. See Appendix.]

Mr. GRIGGS. Mr. Chairman, I do not doubt that almost every Member of the House favors the proposition of the gentleman from Pennsylvania [Mr. WANGER]; but I think it is due to another Member of this House, who has had service on the Post-Office Committee for a good many years and who has ably and faithfully represented his people and all the people of the country, that he should receive the credit due him.

Mr. WANGER. Mr. Chairman, I agree most heartily with that. If it had not been for the gentleman from Kansas [Mr. MURDOCK] my attention would not have been directed to this subject probably. [Applause.]

Mr. GRIGGS. I am very glad to hear the gentleman from Pennsylvania [Mr. WANGER] say that, and I am delighted over the death-bed repentance of my friend from Pennsylvania on this question.

On February 20 of last year the gentleman from Kansas [Mr. MURDOCK] offered this amendment to the post-office appropriation bill:

Provided, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of a divisor less than the whole number of days such mails have been weighed.

I favored that amendment then, and I say now that if there was any discoverer of this proposition in the legislative department, the gentleman from Kansas [Mr. MURDOCK] is entitled to be known as the discoverer of the wrong and the real author of this amendment, although I regret that he is not also the finisher of it.

We had a debate on this question on February 26 of last year, when I opposed the motion made by the chairman of the Post-Office Committee to suspend the rules and send the post-office appropriation bill to conference. I said then, just preceding Mr. MURDOCK's remarks, after having named several other propositions which we proposed to carry through the House by motion—

There is another amendment the House ought to have an opportunity to vote on right now, and that is the amendment of the Senate, known as the "Murdock amendment," the proposition offered in the committee, and known throughout the country as the proposition of the gentleman from Kansas [Mr. MURDOCK]. This provides for making the weighing by the Post-Office Department of the mails speak the truth. That is all there is to it. That amendment provides that if you weigh the mails for a certain number of days, you shall use that number of days as a divisor to ascertain the average, and I defy any man to show me any rule in mathematics, in law, or in reason to use six as a divisor in order to obtain the average of seven daily weighings. All we ask upon that question is that these figures be made to speak the truth. You know they say figures do not lie, and they do not if they are made right, but if they are not right, they lie, and, as General Toombs, of Georgia, said once, "like the devil."

Being in charge of the time on this side, I then yielded some time to the gentleman from Kansas [Mr. MURDOCK], who said this:

Mr. Speaker, as the post-office bill came originally to the House committee it had four provisions in it. By a special order two of those provisions were exposed to a point of order and two were saved from possible points of order. One of the provisions was the divisor proposition just mentioned by the gentleman from Georgia [Mr. GRIGGS]. Yesterday the divisor proposition went back into the bill in the Senate, and was in the bill when the Senate passed that bill. Now, as the bill left the House, after final action by the House, the railway mail pay was cut in the region of two and one-half to three millions of dollars. As the bill left the Senate, after final passage through the Senate last night, railway mail pay is cut about $8,000,000. If you vote up the motion now to suspend the rules, I believe that every man here who votes for this motion, made by the chairman of the Committee on the Post-Office and Post-Roads, will vote to cut railway mail pay about $3,000,000. If he votes down that motion and against that motion, he cuts off an opportunity to concur in the Senate amendment and cut railway mail pay about $8,000,000. The issue is plain. I would like to see every Member of the House on record on that issue. The railway mail pay, which is the biggest thing in this bill, and which is one of the biggest single items of expenditure in any government, has been under impeachment for thirty-three years. It has been condemned time after time by Postmasters-General, and its correction has been attempted by four different commissions, each commission ending in a dog fall. Now, this Congress has come up to the point of cutting down the railway mail pay. Are you going to side step the opportunity or are you going to be courageous and cut it what it ought to be cut? That is all I have to say.

That amendment was as good last year as it is to-day. It was as germane last year as it is to-day. I believed then that the ruling of the chairman (I forget who was the chairman then) was wrong. I am certain, and I congratulate the House and the country, that the ruling of the chairman to-day [Mr. MANN] is correct on that question, because it gives this House an opportunity to vote on it, as it ought to have done last year. [Applause.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. WANGER].

The amendment was agreed to.

Mr. KÜSTERMANN. Mr. Chairman, some time ago I sent to the desk an amendment to the amendment offered by the gentleman from Tennessee, which seems to have been overlooked, and I ask if it will be in order now?

The CHAIRMAN. The gentleman from Wisconsin offers the following amendment, which the Clerk will report.

The Clerk read as follows:

Add to the amendment offered by the gentleman from Tennessee the following: "or any patent medicine or compound containing more than 3 per cent alcohol."

Mr. OVERSTREET. Mr. Chairman, is that to some paragraph that has already been passed?

The CHAIRMAN. The amendment is directed to an amendment already adopted offered by the gentleman from Tennessee.

Mr. OVERSTREET. Is the amendment to which this amendment is addressed properly before the committee at this time?

The CHAIRMAN. Does the gentleman from Indiana make a point of order on this amendment?

Mr. OVERSTREET. Yes; but I wanted to find out first to what it is addressed.

The CHAIRMAN. For the information of the House the Clerk may read the amendment to which the amendment of the gentleman from Wisconsin is addressed.

The Clerk read as follows:

Page 18, amend by adding after the end of line 13, the words "provided no part of said sum shall be used to pay for the carrying in the mails of any malt, vinous, or spirituous liquors or intoxicating liquors of any kind, or any cocaine or derivatives thereof, nor any patent medicine or compound containing more than 3 per cent alcohol."

Mr. OVERSTREET. I make the point of order against the amendment.

The CHAIRMAN. The Chair is of the opinion that the amendment offered by the gentleman from Wisconsin to add to the amendment already agreed to by the committee on this same paragraph, the committee not having passed the paragraph, is in order.

Mr. OVERSTREET. Well, I will accept the amendment. [Laughter.]

The CHAIRMAN. This decision is in conformity with the ruling for many years. The question is on agreeing to the amendment offered by the gentleman from Wisconsin.

The question was taken, and on a division (demanded by Mr. KÜSTERMANN) there were—ayes 21, noes 30.

So the amendment was rejected.

The Clerk read as follows:

For pay of freight or expressage on postal cards, stamped envelopes, newspaper wrappers, and empty mail bags, $300,000. And the Postmaster-General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, shall be transmitted by either freight or express.

Mr. HARRISON. Mr. Chairman, I move to strike out the last word. I observe with great regret that there is no provision in this bill for the extension of the parcels post. I use the word "extension" advisedly, for we have already a sort of lame parcels post in this country; but I believe that the majority of the inhabitants of the United States are not aware of this fact. They have a vague idea that some kinds of merchandise may be sent by mail, but they do not know that we have a sort of halfway parcels post. The Postal Guide published by the Department will not elucidate the question to anybody seeking for information. There is a great air of mystery around the whole subject which can not be dispelled by an investigation of the index in this guide. It is true that the index of the Postal Guide refers to the parcels post as established by the postal convention with foreign countries, but I defy anybody who is not an expert in the matter to locate exactly where in the postal guide may be found the provisions for our domestic parcels post. They may be found under the heading of third and fourth class mail matter, but the index makes no reference thereto, except by inference. As the law is at present constituted, packages up to 4 pounds in weight are carried throughout the United States. The charge for small parcels is 4 cents for a quarter of a pound, 8 cents for a half pound, and 16 cents for a pound; enormously dear as compared to the European systems, but by far the cheapest way to send a package in the United States.

There are several bills before the committees of the House and of the Senate for the extension of our parcels post. It is not my ambition or intention now to offer for the consideration of the House a perfected scheme for parcels post. I wish merely to debate, in the short time I have, the general proposition. I, personally, am willing to vote for any one of the bills, or any amendment to this bill, which will perfect the inefficient system of parcels post which now exists.

It was once said by a great statesman of the last decade that there were six reasons why there ought not to be a parcels post in this country, and those six reasons were the six express companies. [Laughter.]

Now, this may have been true of his day, and to some extent it may be true to-day, but I am inclined to think that so far as the membership of this House is concerned a very much higher motive regulates those who are called upon to pass on this question. There are several grounds of opposition to the extension of the parcels post. In the first place, the claim is made on both sides of the House that such legislation is paternalistic. This statement apparently does not take into account the fact that we have already a parcels post, nor can it be urged with any more success now against the parcels post than similar objections were urged one hundred and twenty years ago in the Continental Congress and in the first sessions of the Congress of the United States against the establishment of the post-office itself.

Another source of objection is uncertainty as to the cost of such an establishment. My friend from Georgia [Mr. HARDWICK] made an excellent speech on this subject a few days ago. He has received communications from the postmasters-general of four or five of the leading European countries, answering his requests for information as to whether their parcels post pays for itself—and the answer leans generally to the affirmative. Whether or not this would be so in our country I will not venture to say. Of one thing I am certain, the establishment of a parcels post on our rural free-delivery routes is bound to pay its own way and to make a profit, besides proving the greatest boon to our farmers.

Still a third class of objections comes from the country stores. I have received many letters on the subject—and I have no doubt all of my colleagues here have had the same experience—purporting to come from representatives of the country stores. These letters display no interest whatever in the public welfare or in the pressing needs of the community, but violently assail the parcels post, as proposed, from their own selfish standpoint. To them I would say that the big department stores will be unable to submerge them through the medium of the parcels post. The best argument in support of this is found in the very countries where the parcels post is now most efficient—in England and France. We have no store in New York more perfectly organized than Harrod's stores in London. The saying is that one can purchase there everything from a feather bed to a white elephant. And this is only one of many similar stores in London and Paris. And yet every little town in Great Britain, in spite of the excellent parcels post, or perhaps because of it, supports as many substantial and prosperous retail shops as like communities in the United States.

Anyone who has had any experience in the foreign countries of Europe will, I think, recognize the value of the parcels post, and will greet with enthusiasm any suggestion to establish a similar system in this country. It is one of the many conveniences of life which may be found in foreign countries and in which we, I am sorry to say, are lacking.

Now, as to the express companies, it is true that they have had a very creditable part in the development of civilization in the United States, but I submit for the consideration of this day and generation that conditions which existed when the express companies were established no longer prevail throughout the United States and can no longer be urged in excuse of the existence of the express companies. The first express company in my State, the State of New York, was established in 1841, to supplement the railroad service in the transmission of packages. At that time one expressman with a carpet bag carried all the express parcels from New York to Buffalo, and I want to show you what he had to do in order to carry them and why an express system was necessary.

At that time the means of conveyance between New York and Buffalo were by rail to Auburn, N. Y., then by stage from Auburn to Geneva, then by rail again from Geneva to Rochester, and then by mail coach or by private conveyance to Buffalo. The voyage took four nights and three days and was made once a week. Under those circumstances it was obviously impossible, since there was no one company performing the duties of transportation throughout all this section of country, for the railroads to do it, and that was the reason, I apprehend, why the express company was started in our State. Another instance, and one still more striking as an excuse for the formation of express companies, was the situation that existed throughout the great West about the end of the fifties. California gold had been discovered, but there was no means of transmitting parcels or the mail across those great desert barren spaces of our country excepting through the kindness of some sturdy pioneer or argonaut who was crossing in a prairie schooner, and so the California pony express was founded, the forefather of the present Wells Fargo Company, from St. Joseph, Mo., the end of the railroad and of the telegraph line——

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. GAINES of Tennessee. I ask unanimous consent that the gentleman's time may be extended for five minutes.

Mr. OVERSTREET. I move, Mr. Chairman, that all debate on the pending paragraph and amendments thereto be closed in five minutes.

The CHAIRMAN. The question is on the motion of the gentleman from Indiana, that all debate on the pending paragraph and amendments thereto be closed in five minutes.

The question was taken, and the motion was agreed to.

The CHAIRMAN. The Chair will recognize the gentleman from New York.

Mr. HARRISON. Mr. Chairman, the California Pony Express started from St. Joseph, Mo., at the end of the railway and of the telegraph line, and by successive relays of ponies, running the perils of the Indians and traversing the vast alkali plains of what are now the States of Nevada and Utah, accomplished the distance from St. Joseph to San Francisco in ten days, and charged $5 apiece for letters that were so transmitted. Their business expanded enormously, and they soon became most useful and trustworthy agents in the development of the country. People used to intrust all their most precious possessions to the Wells-Fargo Company, ranging from a bag of gold dust up to a baby.

I have discussed these questions before the committee because I want to be fair to the express companies. I wish to establish a reason for their creation and the necessity for their existence during long years of our development. But as matters exist to-day I can not see any reason for the existence of express companies, nor any excuse for advancing the suggestion that the express companies are so valuable that we do not need a parcels post. On the contrary, I maintain that the parcels post is coming and the express companies must go.

At the present time there is an extraordinary network of railroads which traverse this country in every direction, and the work of the transportation of packages is performed by the railroad companies and not by the express companies. Now,

let us see what the express companies do for you. Suppose that you and I were residents of small towns, perhaps in the same State. I want to send you an express package. I take it myself down to the railroad station. I give it over to the express agent. I pay him and he puts it on the train. The railway company transports it to the other small town, and when it gets there gives the package over to the express agent. The express agent there then notifies you sooner or later that there is an express parcel waiting for you in the station, which you have to send for and get yourself. In other words, the express company does nothing except collect a tax which is exorbitant, unwarranted, and unequaled in any other country in the world. [Applause on the Democratic side.]

In these piping times of "trust busting" I have often wondered why the attention of some of these eminent "trust busters" has not been directed to the express companies.

Mr. GAINES of Tennessee. I am not eminent in the business, but I am doing my best to get the Ways and Means Committee to investigate the matter. I introduced a resolution, I had a hearing, but I have not heard from the committee. It still has the matter out here somewhere.

Mr. HARRISON. I admire the gentleman's temerity and wish him success.

This is the biggest trust in the country. It is the best organized and it is the best worked. It has divided the United States into six or eight provinces or satrapies, and nobody can transmit express parcels except under the regulations of the express companies met in convention, as applied through the machination of the satrap located where the unfortunate individual happens to reside.

Let me give you one instance—and there are, no doubt, hundreds of others—where the wonderful machinery of the express trust was displayed. A friend of mine in New York a few years ago desired to ship some horses across the continent. He applied to three or four railway companies in New York. Each one of them said that there was only one way of doing this, and that was by sending them by the Wells-Fargo Express Company. My friend went to the Southern Pacific Company and said:

I do not want to send these horses by express. I want to send them by freight for one-quarter of the cost.

The railroad company said, "We can not do that. They must be sent by Wells-Fargo Express." My friend produced a letter in which this railway company had agreed several years before to send his horses by freight across the continent, and the Southern Pacific Company capitulated. This is of interest to show how perfect this trust is. If you apply to any railroad company in instances of this sort they will, if possible, refer you to some express company for performing the same service. [Applause.]

But the day of reckoning is at hand. In ever increasing numbers Americans are traveling abroad. We are learning what the convenience of the parcels post means to the people of those communities, and how blessed they are in their freedom from our express trust and its extortionate charges. The time is not far distant, in my opinion, when the people of the United States will demand that our Government shall assume the responsibilities of a perfected parcels post, and thereby add to the comfort and happiness of life here one of the greatest conveniences of modern times.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HARRISON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is their objection? [After a pause.] The Chair hears none.

Mr. GAINES of Tennessee. Mr. Chairman, I want to ask unanimous consent to put a few lines in the RECORD from a volume I have here, entitled "The Truth About Trusts," by John Moody, in which reference is made to this "express trust." It will not take much of the RECORD, and there is a great deal of information in it.

The CHAIRMAN. The gentleman from Tennessee [Mr. GAINES] asks permission to have inserted in the RECORD a few lines.

Mr. GAINES of Tennessee. A page and a half of the book.

The CHAIRMAN. On the express question. Is there objection? [After a pause.] The Chair hears none.

The matter referred to is as follows:

THE EXPRESS TRUST.

The following leading express companies, though distinct corporations, are, in effect, a trust, as they operate in harmony and are, for the most part, directly allied through financial interests:

ADAMS EXPRESS COMPANY.

Formed in 1854 as a joint stock association. It operates express routes on more than 50,000 miles of railroad, embracing the Pennsylvania, the New York, New Haven and Hartford, the Chicago, Burlington and Quincy, and other systems. It controls the Southern Express Company, which operates throughout the entire South, and in the spring of 1903 it purchased the Morris European and American Express Company, which does an express business between this country and Europe and to different points in Europe.

Capital stock $12,000,000, on which dividends are paid at the rate of 4 per cent per annum, with extra dividends. In 1903 8 per cent was declared in all. The company also has outstanding $12,000,000 in 4 per cent collateral debentures, due 1948. These debentures were given to stockholders in 1898 to represent a division of the accumulated profits of the company.

AMERICAN EXPRESS COMPANY.

Formed under New York laws in 1839 and 1868 as a joint stock association. Operates in express business on about 45,000 miles of railroad in the United States, including the Boston and Maine, various Vanderbilt lines, Illinois Central, and others. In the spring of 1903 it purchased control of the Westcott Express Company, which does a local business in New York City and vicinity.

Capital, $18,000,000. Dividends, 8 per cent per annum. No bonds.

UNITED STATES EXPRESS COMPANY.

Formed under New York laws as a joint stock association in 1854. Operates an express business upon about 30,000 miles of railroads in the United States, covering the Lehigh Valley, Lackawanna, Rock Island, St. Paul, and Baltimore and Ohio systems. It acquired, in 1887, the Baltimore and Ohio Express Company, and in 1903 the Metropolitan Express Company.

Capital stock, $10,000,000; par, $100. Dividends paid, 4 per cent per annum. No bonds.

WELLS, FARGO & CO.

Formed under Colorado laws February 5, 1866. The company operates an express business on about 45,000 miles of railroad and steamer lines, the main territory being in the West. It also does an important banking business.

Capital stock, $8,000,000. Dividends paid, 8 per cent per annum. No bonds.

MESSAGE FROM THE SENATE.

The committee informally rose, and Mr. CAPRON having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed, with amendment, bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 15444. An act extending the time for the construction of a dam across Rainy River.

The message also announced that the Senate had passed the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 903) to amend section 2, chapter 433, Thirtieth Statutes at Large, entitled "An act to confirm title to lots 13 and 14, in square 959, in Washington, D. C.

POST-OFFICE APPROPRIATION BILL.

The committee resumed its session.

The Clerk read as follows:

For railway post-office car service, $4,800,000.

Mr. KÜSTERMANN. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, we will never see the end of our post-office deficit unless we come down to business methods. Here, again, nearly $5,000,000 is asked for the renting of mail cars. Last year we paid $5,743,444 for the same purpose. Now, then, it is a fact that we can build and own all mail cars necessary for the service for about four times the annual rental. I have looked over the reports and I find such cases as these:

From Brookfield, Wis., to McGregor, Iowa, a distance of 182 miles: Annual cost of transportation of mail between these two points, $31,434.98; annual rental of one 50-foot car, $7,272.

From Milwaukee, Wis., to Ishpeming, Mich., a distance of 309 miles: Annual cost of transportation of mail between these two points, $68,576.40; annual rental of six cars, $32,866; average rental per car, $5,474.57.

From Granger, Wyo., to Huntington, Oreg., a distance of 541 miles: Annual cost of transportation of mail between these two points, $203,633.29; annual rental of three cars, $35,228.25; average rental per car, $11,742.75.

From Pasco to Tacoma, Wash., a distance of 254 miles: Annual cost of transportation of mail between these two points, $47,278.34; annual rental of one car, $6,337.25.

From Los Angeles, Cal., to Yuma, Ariz., a distance of 249 miles: Annual cost of transportation of mail between these two points, $31,941.42; annual rental of one car, $6,223.59.

Now, running through the entire report, I find the average rental for the 50 or 60 foot cars to be from $6,000 to $7,000 per year, and I have it on the best of authority that only $16,000 to $20,000 would be the cost of building a car and equipping it. If that is true, and I believe it is, we ought to take speedy steps to build our own cars and not continue to pay these high rentals. While I know nothing can be done regarding this matter at the present time, I do hope the post-office authorities and the Post-Office Committee will take up this matter and suggest at the next session of Congress some way to stop this squandering of the people's money.

Mr. MURDOCK. Mr. Chairman, I move to strike out the last word.

Mr. OVERSTREET. Mr. Chairman, I move that debate on this paragraph and the amendment thereto close in two minutes.

Mr. MURDOCK. I will not occupy but two minutes.

The CHAIRMAN. The gentleman from Indiana [Mr. OVERSTREET] moves that debate upon the pending paragraph and the amendment thereto close in two minutes. Is there objection?

There was no objection.

Mr. MURDOCK. Mr. Chairman, this item for the railway postal-car service, this decreased appropriation, is one upon which the Congress of the United States is to be congratulated for having brought about a reduction by recent legislation enacted here. I want to put in the RECORD merely a statement that there has been a change of practice in the Department within the last year, and that we are now paying on 40 feet of space in 70-foot cars, the Department having started a system of paying for part of a car. During the past years, since this system began, in 1873, the Government has paid for cars that were exclusively used for mail. Now there has been a slight change in the system, and I merely want to get it into the CONGRESSIONAL RECORD for future Congressmen to read.

Mr. GAINES of Tennessee. Mr. Chairman——

The CHAIRMAN. Debate upon this paragraph has closed, and the Clerk will read.

The Clerk read as follows:

Railway mail service: For 11 division superintendents, at $3,000 each; 11 assistant division superintendents, at $2,000 each; 5 assistant superintendents, at $2,000 each; 19 assistant superintendents, at $1,800 each; 131 chief clerks, at $1,800 each; 271 clerks, class 6, at not exceeding $1,600 each; 1,274 clerks, class 5, at not exceeding $1,500 each; 530 clerks, class 5, at not exceeding $1,400 each; 2,100 clerks, class 4, at not exceeding $1,300 each; 2,225 clerks, class 4, at not exceeding $1,200 each; 5,800 clerks, class 3, at not exceeding $1,100 each; 2,100 clerks, class 2, at not exceeding $1,000 each; 810 clerks, class 1, at not exceeding $900 each; 800 clerks, class 1, at not exceeding $800 each; in all, $18,588,000: *Provided*, That the Postmaster-General may, in his discretion, under such regulations as he may provide, allow a clerk who is sick leave of absence with pay, his duties to be performed without expense to the Government during the period for which he is granted leave, not exceeding thirty days in any fiscal year.

Mr. GAINES of Tennessee. Mr. Chairman, I move to strike out the last word. I would like to ask some gentleman, a member of the committee, or the gentleman from Kansas, how much money is appropriated in this bill to carry Government bonds, Government securities, and Government moneys through the mails in competition, I may say, in this express octopus?

Mr. OVERSTREET. There is no appropriation in this bill covering that item.

Mr. GAINES of Tennessee. Well, why do we not appropriate some money, and send some of our public moneys, etc., through the mails and create competition with this express octopus? I am asking the question seriously, I assure the gentleman, and this is not the first time I have inquired into this matter.

I want to say this, Mr. Chairman, in the early part of the session I introduced a resolution which was referred to the Committee on Ways and Means, to investigate the question of hauling these Government moneys, bonds, and securities, to find out what rates were paid the express companies—what rates were paid when we hauled them by mail. Well, I have not been able to get any report from the committee. The resolutions have been lodged in that great committee for months.

I was given a hearing a few minutes, with some promises made. As I understand the situation, the same rates are being paid we paid forty years ago, and the American people and the American Government are robbed, as the record shows, by the same "express trust" rates. The contract we have is forty years old. The same contract is continued from year to year at the same old rate! We are hauling about "forty" times more money, about "forty" times more bonds in quantity or value, and a hundredfold, I dare say, more securities than we did forty years ago, and at the same rate; and the American Government as a government, and the American people as a people are being charged the same rates by this New York octopus, for that is where its head is, and its tail is over in the Golden Gate, and its head in Hell's Gate [great laughter], and nobody knows where its intentions are, and it is robbing the American people and "gulping" from the American Treasury. The fact is that we can carry these Government moneys and property from Treasury to subtreasury, and from bivouac to bivouac, as it were, to the Army and Navy, I may say, and from one side of the country to the other through the mails, and pay but a very small insurance, and possibly without it, and save money, but we do not try to do it. Banks are sending their money in part through the mails. They insure it for an infinitesimal expense, and the Treasurer spoke of this.

It goes through safely in my own State and through other States in the United States with and without insurance. Yet, Mr. Chairman, there has been no arrangement under a Democratic or a Republican Administration, I may say, to establish a service by mail to compete with this New York, with this United States octopus, that my distinguished friend [Mr. HARRISON] has just talked about. Now, I say that is another reform——

Mr. KEIFER. Can the gentleman give us any instance where the Government sends out bonds from the Treasury through the mails?

Mr. GAINES of Tennessee. All I know, I will say to my friend, is what I see—the expense of hauling Government "money," etc., in the Government reports.

Mr. KEIFER. Then you do not mean bonds?

Mr. GAINES of Tennessee. I mean to state that substantially.

Mr. KEIFER. Bonds are not sent through the mails.

Mr. GAINES of Tennessee. I think the reports show I am correct, but confine it to money and securities; some of it, a little, an infinitesimal part, is being sent through the mails, and the great balance is sent by the express companies, and the Government of the United States is being held up annually and has to pay deficiencies every year.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GAINES of Tennessee. I want another minute.

Mr. OVERSTREET. I move that all debate upon the paragraph be closed in two minutes.

The CHAIRMAN. The gentleman from Indiana moves that all debate upon the paragraph be closed in two minutes.

The question was taken, and the motion was agreed to.

Mr. GAINES of Tennessee. Now, Mr. Chairman, feebly as I may, and in a nonpartisan way, you must see, and hurriedly, I have called your attention to this, a place where the Government of the United States as a government and the American people as a people are being robbed by this express octopus. Now, I say it is the duty of that great Ways and Means Committee to bring that report out. It is also the duty of this great Congress, Mr. Chairman, to legislate on this subject; it is the duty of the great Postmaster-General Meyer or "General" CLAY or "General" MUDD, or anybody else [great laughter], the heads of our great Departments, to bring about a reform that will stop this outrage perpetrated on the Federal Treasury and the American people. [Laughter and applause.]

The CHAIRMAN. The time for debate is exhausted, and the Clerk will read:

The Clerk read as follows:

For actual and necessary expenses of division superintendents, assistant division superintendents, and chief clerks, Railway Mail Service, and railway postal clerks, while actually traveling on business of the Post-Office Department and away from their several designated headquarters, $20,000.

Mr. GOEBEL. Mr. Chairman, I move to strike out, on page 21, in line 8, after the word "Department," all of lines 8, 9, and 10, and insert "$2,020,000."

The CHAIRMAN. The gentleman from Ohio offers an amendment which the Clerk will report:

The Clerk read as follows:

Page 21, after the word "Department," in line 8, strike out the words "and away from their several designated headquarters, $20,000," and insert "$2,020,000."

Mr. GOEBEL. Mr. Chairman, the object of this amendment——

Mr. STAFFORD. I wish to reserve a point of order on that.

The CHAIRMAN. The gentleman from Wisconsin reserves a point of order.

Mr. MURDOCK. Mr. Chairman, is it in order for him to reserve a point of order after the debate has begun.

The CHAIRMAN. The Chair thinks there has been no debate on the subject.

Mr. MURDOCK. The gentleman from Ohio had proceeded.

The CHAIRMAN. The Chair thinks the point of order is reserved in time.

Mr. GOEBEL. Mr. Chairman, the purpose of this amendment is to allow to railway mail clerks their actual expenses while in the discharge of their duties.

Under existing law provision is made for the actual expenses of division superintendents, assistant division superintendents, and chief clerks in the Railway Mail Service. The railway postal clerks are also included, but you will find that the amount appropriated heretofore was but $20,000; that amount is again asked in this bill and the result will be that we have simply covered the expenses of all the other employees except the railway mail clerks. There has also been a construction made by the Department on this provision, to wit, "and away from their several designated headquarters," which excludes railway mail clerks; so that while we are carrying, and have for years carried them in the

permanent law, railway mail clerks are excluded; they are also excluded by reason of the failure of Congress to make the necessary appropriation. By my amendment I seek to strike out the words "and away from their several designated headquarters," and I am inserting $2,020,000 to meet the requirements of this act.

You will also observe that the whole subject as to how this amount shall be audited or expended is left with the Department, and the provision applicable now to all the other employees will be applicable to the railway mail clerks. So that in substance it will provide for an appropriation which will authorize the Post-Office Department to regulate and audit their expenses, and permit that Department to pay to these railway mail clerks their actual expenses incurred while in the performance of their duty. It has always seemed to me that it is wholly unfair to permit the expenses to be paid to all the other employees and refuse so far as the railway mail clerks were concerned. I ascertained from the Department that in order to adjust this compensation it will require during the next fiscal year $2,000,000; adding that to the amount which the bill carries—to wit, $20,000—my amendment will enable the Department to act fairly and justly toward these railway mail clerks. I hope, therefore, in the interest of justice and fairness to these men, that my amendment will be adopted.

Mr. MURDOCK. Mr. Chairman, I favor this amendment. Yesterday this Committee of the Whole raised one grade of city letter carriers a million dollars. The city letter carrier is a delightful man. He has a constituency. He appeals to the political imagination of the man in his district. The rural carrier is a delightful man. He appeals to the political imagination of the man in the country; but the clerk in the postal car belongs neither to the city nor to the country, but belongs to both; and I submit to this House that this man in the postal car is one of the most skilled public employees that we have. He has the most hazardous employment of any man in the Government service, not excepting the soldier of the Army or the sailor of the Navy. Do you know what the postal clerk has to do in the way of skill? He has to know the schedules of four or five States, to know every connection between railroads in those States, and know every change of train schedule and connection, in order to be able to throw into the proper compartment any letter addressed to any town in those four States, distributing each to the right railroad, according to the latest schedule of time-table, and he has to do it under examination at a grade of 99 per cent plus, or within 1 per cent of perfection.

In this country the postal clerks at examinations as a class threw cards as near perfection as 99.42 per cent. That is a matter of skill. Everyone knows what their position is in the way of hazard. In 1907, for the fiscal year, there were 757 postal clerks injured and 21 postal clerks in this country killed. When a wreck takes place your postal clerk is up in front next to the engineer, who is paid twice as much as he, and he is among the tangled and shattered rails, splintered ties, and escaping steam when the crash that brings death with it comes.

What about the other traveling employees of the Postal Department? Where is your inspector in the wreck? Back in the Pullman with a per diem of $5 a day in safety and comfort. There is not a single employee of the Postal Department who travels for the Government but who gets travel pay. Your ocean mail carrier not only gets travel pay; he is also a first-cabin passenger. The postal clerks go out over the line next to the engine, in a hazardous place, exercising a large degree of skill, having irregular hours, and they get no travel pay at all. I believe it was the intention of some earlier Congress to give them travel pay, because the language so indicates. But this House has a chance to-day to do these men justice. You have taken care of the carrier both in the country and in the city, and why not take care of the men who travel out at irregular hours in a dangerous occupation and with skill serve this Government at the very center of the postal system? Because you can take away the city carrier and the system will go on; you can remove the rural carrier and you still have the postal system; you can even take away the local post-offices; but if you remove the very center of this system, if you remove this skilled distributing force, your system will fall.

Here is an article from the Wichita Eagle of the issue of March 9 last, apropos of what I have just said:

MADE SOME HIGH RECORDS—POSTAL CLERKS MADE GREAT ANNUAL EXAMINATIONS.

Railway postal clerks of the Wichita division made a record last month in case examinations, which is probably the best of the entire country, and if they are not proud of it they should be.

Seventy-four examinations were passed by clerks in this division and the average per cent of all was 99.42 correct. That is getting mighty near perfect in case examinations.

In the seventy-four examinations 68,167 cards were handled, and of that number but 394 were thrown incorrectly.

This division has been one of the best in examination records for years, but the record of last month is the best yet made by the clerks under Clyde M. Reed, chief clerk of the Wichita division.

There are over 200 regular railway postal clerks in this division, and about twenty substitutes. Most of these clerks are required to throw two examinations each year, but there are some who are examined but once in a year. The substitutes are examined as fast as they can prepare for examinations, the object being to have them learn the distribution of mail as soon as possible.

February, March, October, and November are the months when most of the examinations are taken. The month just passed was unusual for the number of examinations held, as well as the record made for good examinations.

An examination of a railway postal clerk consists in having him distribute cards marked with the names of the towns in the State on which he is being examined, into a miniature sort of post-office case. Each card must be thrown into the right box. It is a severe test and unless the clerk has studied hard and has at the tip of his tongue the county in which every post-office is located and the route or railroad which supplies the post-office with mail, he will not be able to pass the examination. It is required that he must pass an examination making at least a per cent correct of 98.

The examinations of clerks become less frequent with his lengthening term of service. If a clerk has reached the age of 45 years and has been in the service for more than twelve years, he will be called upon for examination but once each year. But a clerk must pass examinations on every State for which he "works" mail. This means that on some runs the clerks are examined on several States and so they are called for examination twice each year.

Mr. HUMPHREYS of Mississippi. What is the pay of these men?

Mr. MURDOCK. It runs from $800 to $1,600; the lowest grade in the service gets $800.

Mr. HUMPHREYS of Mississippi. Are they allowed any traveling expenses?

Mr. MURDOCK. Not at all. But here is a chance to do these men justice, and this House can do it.

Mr. HUMPHREYS of Mississippi. What is proposed by this amendment?

Mr. MURDOCK. The proposition is in the amendment offered by the gentleman from Ohio, to raise the amount in the paragraph at the top of page 21 to $2,020,000, which will permit the Department to give the postal clerks actual expenses—in some cases, on the small lines, it will be a matter of 50 cents a day, and on the great through lines it may be $1.50 a day; but the proposition is to give each postal clerk not a per diem but his actual expenses on a voucher submitted to the Department.

Mr. FITZGERALD. Will it take $2,000,000 to do that?

Mr. MURDOCK. It will.

Mr. MADDEN. Is there any limitation placed on the expense?

Mr. GOEBEL. Let me say to the House that the whole matter will be under the direction and supervision of the Postmaster-General.

Mr. MADDEN. Is there to be no limit on what is to be allowed in the way of expenses?

Mr. GOEBEL. The discretion is in the Department.

Mr. MADDEN. How many men are there in the service?

Mr. MURDOCK. Fourteen thousand men who actually travel; about 7,000 are men on the smaller lines, and their expenses would be small, probably one meal away from home in a day. About 7,000 are on the great through lines, and their expenses might reach $1.50, and in some cases I expect above that.

Mr. MADDEN. How was the amount of $2,000,000 reached?

Mr. GOEBEL. It was reached by the Department figuring an average of 50 cents a day per man.

Mr. MADDEN. For the 14,000 men for every day in the year?

Mr. GOEBEL. Yes.

Mr. McDERMOTT. Will the gentleman yield to me for a question?

Mr. MURDOCK. Yes.

Mr. McDERMOTT. According to these figures there would be 16,087 men.

Mr. MURDOCK. If the gentleman is going to make a computation, I want to say that about 2,000 of these men do not travel.

Mr. McDERMOTT. Do not they all travel?

Mr. MURDOCK. They do not.

Mr. McDERMOTT. If you raise every one of them from one grade, up to the division superintendent, it will amount to $1,608,700.

Mr. MURDOCK. This is not a proposition to raise the salary; this is a proposition to give them their traveling expenses. This House has before it the plain proposition. It knows the service. There is not a man here who has not seen a railway postal clerk working in his car at night. He knows how skilled and how hazardous that occupation is. He can now do justice to that service by voting for this amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. OVERSTREET. Mr. Chairman, a point of order has been made against the paragraph, and I suggest that we determine the point of order and then proceed with the debate on the amendment.

The CHAIRMAN. The Chair will be glad to hear the gentleman from Ohio [Mr. GOEBEL] and the gentleman from Wisconsin [Mr. STAFFORD] on the point of order.

Mr. GOEBEL. Mr. Chairman, upon the question as to whether a point of order lies, I beg to say this, that all that my amendment proposes to do is to increase the appropriation.

The CHAIRMAN. The Chair does not so understand the gentleman's amendment. The Clerk will again report the amendment.

The Clerk again reported the amendment.

The CHAIRMAN. Will the gentleman from Ohio inform the Chair? As the Chair understands, the item in the bill as it stands authorizes the payment of necessary and actual expenses while traveling away from their several headquarters, and the gentleman offers an amendment which authorizes the payment of expenses while at their designated headquarters.

Mr. GOEBEL. That follows, Mr. Chairman, because of the construction that I have said the Department placed upon this item. I am now trying to avoid that construction.

The CHAIRMAN. The Chair is asking what the law is. Is there any law now providing for the payment of expenses of these officials at any place?

Mr. GOEBEL. Oh, yes.

The CHAIRMAN. Except the appropriation act.

Mr. GOEBEL. Except the appropriation act.

The CHAIRMAN. Is there any other law upon the subject?

Mr. GOEBEL. I think not.

The CHAIRMAN. The Chair would like to suggest the difficulty in the mind of the Chair. As the law is now construed in operation, either through general law or the appropriation act, there is authority granted to pay the traveling expenses of these railway postal clerks only when they are away from their headquarters. Now, the gentleman proposes to change that and authorizes the payment at the designated headquarters of the same officials. That of course would be clearly in itself a change of law unless the gentleman has some authority for it. Not only would it be a change of law, but the gentleman's proposition carries with it an appropriation of $2,000,000 for a purpose nowhere authorized by law so far as the Chair is informed. Has the gentleman any law which would provide for the payment of the traveling or necessary expenses of these officials while at their designated headquarters?

Mr. GOEBEL. No. My amendment proposes to strike out the language "and away from their several designated headquarters," simply to avoid the construction, whether rightly or wrongly, of the Department——

The CHAIRMAN. Well, that is for the purpose of changing the law. The Chair sustains the point of order.

Mr. MURDOCK. Mr. Chairman, I would like to offer an amendment.

Mr. GOEBEL. Mr. Chairman, then I want to amend by striking out simply "$20,000" and inserting "$2,020,000" in its place.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Line 9, page 21, after "headquarters," insert "two million," so as to read:

"Two million and twenty thousand dollars."

Mr. OVERSTREET. Mr. Chairman, I hope that amendment will be disagreed to. Twenty thousand dollars is practically all that could be used for this purpose, and the purpose for which the gentleman from Ohio intends, it is quite clear, would not follow, because he himself admits that the expenses of the clerks could not be paid under the present language of the statute. Therefore there is no occasion to increase the amount of the appropriation.

Mr. GOEBEL. I did not say that. I say under a construction which may be wholly wrong, and which we may afterwards convince the Department is wrong; but unless we make the appropriation it would avail nothing.

Mr. OVERSTREET. It might help some to remind the gentleman of the decision of the Court of Claims which sustains that construction. This item of appropriation is intended to pay expenses of officials named in the paragraph when they are sent off on duties other than those which they perform at their headquarters. It has been endeavored to determine by suit in the Court of Claims that a railway postal clerk would be entitled to his expense when he is in the discharge of his duties and on his route upon the train. But the court held that he was not absent from his headquarters, although he was in the discharge of his duties away from the city of his residence, because his headquarters is the headquarters where his duty is discharged, namely, upon the train. Consequently the increase of the appropriation could not possibly avail in increasing the payment of the expenses, as the gentleman from Ohio [Mr. GOEBEL] evidently intends. And inasmuch as it would not avail anything it would be a foolish appropriation.

Mr. MADDEN. The point, then, is that no travel allowance can be made under that decision except when the person to whom the allowance is made is on special duty?

Mr. OVERSTREET. That is right.

Mr. MADDEN. And does the chairman of the committee wish to convey the information to the House that the amendment is not properly in order because of the fact that the postal clerk is not on special duty, but that his service is in the discharge of his regular duty?

Mr. OVERSTREET. Certainly. There is no more justification, I may say, in allowing the expenses of the postal clerk than there would be in allowing the expenses of the city carrier for his daily lunch or the expense of the rural carrier for his lunch, because they are in the discharge of their duties at the hours when they are away from their homes and, as a rule, they pay that expense themselves.

Mr. MURDOCK. And if the gentleman will allow me, there is an allowance here for street-car fares and the carrier has an allowance for horse hire, has he not?

Mr. OVERSTREET. I think the railway mail clerk rides just as well as the city carrier. He rides on the fast trains. Mr. Chairman, I hope the amendment will be disagreed to.

Mr. GOEBEL. Mr. Chairman, the reason offered by the gentleman from Indiana [Mr. OVERSTREET] seems to me to be technical and does not go to the merit of the proposition. Here we have been carrying a provision for the benefit of the railway mail clerks for I do not know how many years, in the same class with division superintendents and others, allowing to them their expenses. But Congress has failed to make an appropriation for the railway mail clerks. That is all there is about that. But the Department says the act does not apply to railway mail clerks, because Congress did not make enough of an appropriation so as to include them, and by a construction it maintains that clerks are not, while on duty, "away from their headquarters." The fault lies in not making the appropriation. If the objection that has been urged against part of my amendment, that it is a violation of existing law, I am willing to let the latter provision of the act remain. Let us make, then, the appropriation, and leave it to the Department to determine hereafter as to whether or not the appropriation can be made available.

Now, then, Mr. Chairman, my friend asks what is the use of making this appropriation, and says that it is idle. I ask, What harm can there be if you make this appropriation?

Mr. HUGHES of New Jersey. Will the gentleman yield to a question right there?

Mr. GOEBEL. Yes.

Mr. HUGHES of New Jersey. I understand the gentleman is a member of the Committee on the Post-Office and Post-Roads?

Mr. GOEBEL. Yes, sir.

Mr. HUGHES of New Jersey. Can the gentleman give the committee any information as to whether or not this money will probably be used for that purpose if appropriated by the committee?

Mr. GOEBEL. The act now provides for the actual and necessary expenses of railway postal clerks.

Mr. OVERSTREET. When away from their headquarters.

Mr. GOEBEL. So that this amount of money, if the appropriation is made, will be used for that purpose. However, there is included in the original act other employees. Now, is it idle to make the appropriation? What harm can there be in making it? If by law or any construction of the Post-Office Department they can not get it, the amount simply reverts back into the Treasury. But let us be fair. Why have you for years and years carried this provision in the appropriation bills and failed to make the appropriation? You are paying the expenses of the other employees mentioned in this item, why make this distinction as to these clerks? All I am asking is not to change the law, but to make the appropriation in order that the Department might determine whether railway mail clerks come within the provisions of the present law, and that there may be no further excuse on the part of the Department to withhold the expenses for lack of an appropriation.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAFFORD. Mr. Chairman, I do not question the efficiency and worth of the railway mail clerks, or that this branch of the service is very well conducted and most efficiently directed, but I do wish to take issue with the statement made

here in this debate that there are no other men in the postal service that require the same high efficiency that is required in the railway mail service, for many of the high-grade distributing clerks in our large post-offices must have the same expert knowledge.

The claim has been made here that we make no allowance to these railway mail clerks for their expenses while traveling in the performance of their duties. I wish to say to the committee that since I have been a member of the Post-Office Committee I have always understood that one of the reasons for the difference in the rate of pay to railway mail clerks, as distinguished from that given to post-office clerks, in which latter the maximum is $1,200, and in the railway mail clerks, where the maximum is $1,600, that Congress, following the suggestion of the committee, thought it was better and more economical administration to include in the salaries a lump-sum allowance for expenses, rather than portioning it out in piecemeal by a separate allowance, which would be subject to all kinds of abuse.

That is one of the reasons that accounts for the difference between the salaries of the railway mail clerks and the salaries of the post-office clerks. This year, for the first time in several years, I wish to call to the attention of the House, we have made provision so that every railway mail clerk will be able to get his promotion according to the scale in force in the Department, it having been called to the attention of the Department officials at the hearings that their estimate was inadequate to meet that scale of pay, and we have added $164,000 and made provision for the increased number in the respective grades, thereby giving to 1,600 clerks a promotion, in some instances of $100 and in a few instances of $200, so that every railway mail clerk can have no complaint against the action of the committee in not making adequate appropriations to permit of the prescribed promotions according to the scale adopted by the Department.

The committee last year recommended, and the House adopted the recommendation, increasing every railway mail clerk's salary $100.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAFFORD. I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. STAFFORD. We raised the salary of every railway mail clerk $100, thereby raising by that amount the highest compensation paid to the clerks in the respective classes. For my part I voted for and supported that amendment because I recognized that the expenses of the railway mail clerk were increasing and believed that the committee was justified in raising them so as to provide for their increasing expenses, but not in this crude form, as suggested by the amendment of the gentleman from Ohio, appropriating $2,000,000 without any restrictions whatsoever, and not to be expended under the direction of the Postmaster-General according to a system that he might devise, because there is nothing carried in the bill here that limits the expenditure—but just the amount of $2,000,000 is added without any limitation whatever. For my part, I believe if these salaries are inadequate it would be better to make a lump increase in salaries according to the character of service which requires an absence from home than by an allowance which is subject to all manner of abuse, as is exemplified in the per diem allowance to field inspectors, which can not be corrected or restricted to prevent the abuse.

This year, believing that the diminishing receipts from the postal service because of the depression in business in the last five months did not justify increasing salaries over what was required in the present law, the committee deferred making any provision for other increases. The Department confirms us in that decision by showing the diminished receipts from the different post-offices.

Think of it for one minute, gentlemen, that in the city of New York, which has total receipts of $20,000,000, during the period of October their receipts fell off $150,000 over those of the corresponding month of last year; during the month of November the business ran down so that the receipts were little less than the preceding year. In December, as the postmaster says, the receipts would have been decreased if it had not been that one large firm deposited, out of course, 70,000 postal cards in the post-office for distribution throughout the country. In January the receipts showed a reduction of 5 per cent; in February, a reduction of 3 per cent; and this condition has prevailed not only in New York, but in Philadelphia, in Chicago, and in every large city where the postal receipts are large and where we derive the large part of the revenues to maintain the postal service.

We provided last year an appropriation for a twelve-million-dollar increase during the present fiscal year alone in the salaries of city and rural letter carriers, post-office and railway mail clerks. In this bill we provide $2,050,000 increases of salaries for promotions of clerks in the post-offices of the first and second class under the classification act.

We provide $1,300,000 more for increases of salaries to the letter-carrier force and several hundred thousand dollars for increase in the salaries of the railway mail clerks, and we go before the country and say that we have done adequately and sufficiently for the carriers and the post-office and railway mail clerks under existing conditions of greatly diminished postal receipts and with the expectation of a deficit in the revenues for this fiscal year approaching $12,000,000 to $15,000,000, and which during the ensuing fiscal year might aggregate $20,000,000 or more. We did not feel warranted, under the peculiar conditions existing, to bring into the House a bill which meant an expenditure of greater sums to increase the already alarmingly large deficit, but believed these other questions of increase could be properly deferred to more auspicious times. I take the position that the proposition involving $2,000,000 of expense under these conditions ought not to be adopted, and say to you, gentlemen, upon whom the responsibility for the action of this House rests, in behalf of this postal service, to take heed lest these expenditures will far overreach the postal receipts. [Loud applause.]

Mr. HUGHES of New Jersey. Mr. Chairman, I am very much interested in the remarks of the gentleman from Wisconsin [Mr. STAFFORD], a member of the postal committee, as I suppose the other members of the Committee of the Whole are, and I would suggest to him that if curtailment is necessary it would be a good idea now, and it would have been a good idea a long time ago, to have commenced with the railroads. It seems to be admitted that for a long time it has been possible for the railroads to obtain compensation on the theory that six times seven are forty-nine. Now, we have just cured that mathematical error here this afternoon, and we are about to vote on a proposition involving a question of doing justice to a class of men who have long had injustice done them by this body and by this Government. In our travels we have all met with the railway mail clerks; and I want to call the attention of the committee to an incident which came to my attention in traveling through my own district. The end of the New York and Greenwood Lake Railroad is at a summer resort known as "Greenwood Lake." The railway mail clerk who had that run ran from Jersey City to Greenwood Lake; had a run which ends there at night. He was compelled to stop there overnight, there being no train out. He was compelled to keep a residence in Jersey City, residing there with his mother. At the end of his run he has had to go to the hotel, pay for his supper, pay for his lodging, and pay for his breakfast the next morning. That man has been supposed to do that on a salary of $800 a year.

Mr. STAFFORD. Will the gentleman yield?

Mr. HUGHES of New Jersey. Yes, sir.

Mr. STAFFORD. I understood the gentleman to say that the salary of a railway mail clerk was $800 a year.

Mr. HUGHES of New Jersey. At the time I was speaking of.

Mr. STAFFORD. There is no railway mail clerk who has been accepted into the service who receives the minimum salary of $800 a year.

Mr. HUGHES of New Jersey. How long has that been so?

Mr. STAFFORD. That has been so for a long time, except as to men during their probationary period, while serving as substitutes.

Mr. HUGHES of New Jersey. This man was very probably a probationary mail clerk.

Mr. STAFFORD. After being admitted into the service a man is paid at the rate of $900 for the first three months, and after that at the rate of a thousand dollars a year.

Mr. HUGHES of New Jersey. The gentleman has said nothing inconsistent with what I state.

Mr. STAFFORD. I think the gentleman gave the impression that railway mail clerks receive as low a salary as $800 a year. Their average compensation is $1,200.

Mr. HUGHES of New Jersey. I said this man was getting $800, and I still say so. It is evident that an injustice was being done in that case. Now, it has been said that Congress, as a general proposition, is generous to people in high places. It has been said a dozen times here this afternoon that Congress has been extremely generous to the railroads. What the gentleman from Kansas [Mr. MURDOCK] has said is admitted on all hands—that these men occupy a hazardous position; that they do grand work; that they are a splendid body of men. They have no time to come here, either themselves or through their representatives, to lobby propositions through this House or

through this committee, but the inherent justice of their claim is an appeal to every Member of this House. I submit that it is no more than right and no more than fair that these men should be equalized. One man may have a route or a run that sends him out in the morning and home again at night. He receives fully as much salary as another man who may be sent out 50 or 60 miles and be compelled to stay overnight. It is no more than fair that the expenses of the second man should be paid, and he be placed in a position of equality with the other.

Mr. FINLEY. Mr. Chairman, I do not think anyone who is acquainted with legislation in the interest of railway mail clerks will doubt in the least my friendship and interest in this large and most deserving class of public servants. My record in Congress and in the Post-Office Committee of the House prove conclusively my concern for the railway mail clerks; but, Mr. Chairman, an amendment is proposed here that can do no possible good to the railway mail clerks. It is proposed to increase the item here of $20,000 to $2,020,000. I say to the Members of this House that not one cent of this $2,000,000, even if it is voted, can possibly, under existing law, be paid to the railway mail clerks for expenses on the ordinary run and travel—not one cent. Now, I want to ask, what is the necessity for increasing a $20,000 item to $2,020,000 when it can do no possible good? It will not amount to one single cent of benefit to any railway mail clerk in the United States—not a cent.

Mr. GOEBEL. Does not the gentleman know that railway mail clerks are carried in this item, and that the reason there was no compensation paid them was because there was an insufficient appropriation?

Mr. FINLEY. If the gentleman will excuse me, I will say that the gentleman from Ohio is aware of the fact that under existing law, as construed by the Department and passed upon by the courts, the railway mail clerks are not entitled, under the law, to travel expense allowance when on their runs.

Mr. GOEBEL. Where is the decision of the court that has construed this item?

Mr. FINLEY. My understanding is that one of the mail clerks brought a suit in the Court of Claims.

Mr. GOEBEL. Where was it; in what case?

Mr. FINLEY. I invite the gentleman's attention to the decisions of that court.

Mr. GOEBEL. The gentleman has made the statement, now he ought to cite us the case.

Mr. OVERSTREET. I make the statement and I stand by it.

Mr. MURDOCK. If the gentleman will permit me.

Mr. FINLEY. I will yield to the gentleman from Kansas.

Mr. MURDOCK. The gentleman says that the additional $2,000,000 could not do anyone any possible good. Can it do anyone any possible harm?

Mr. FINLEY. I will say that I am in favor of doing what is right, and for the benefit of the railway mail clerk. Let us change the law. Let us increase the salary, as was done last year, and done on my initiative. That is what I am in favor of. It is idle to increase this appropriation. No; it will not do any harm, but it will be a $2,000,000 unexpended appropriation at the end of the fiscal year. Why not amend the law and increase the salary of the railway mail clerks? Go about it in a straightforward and open way.

Mr. MURDOCK. I will be in favor of that, but here is an item here, and we can place in the hands of the Department $2,000,000. I want to say to the gentleman that this is only one-half of the legislative body—the Senate has to pass upon this before it becomes final legislation.

Mr. FINLEY. This will not place any money in the hands of the Department which can be used for the benefit of the railway mail clerks. I do not think the gentleman intended to make the broad statement, because he is mistaken. There is no doubt about the law, so that the proposed increase here is utterly idle.

Mr. OVERSTREET. Mr. Chairman, I move that all debate on the paragraph and the amendment thereto close in three minutes.

The CHAIRMAN. The gentleman from Indiana moves that all debate on the pending paragraph and amendment thereto be closed in three minutes.

The motion was agreed to.

Mr. OVERSTREET. Mr. Chairman, a proper construction of this amendment is to be found in the language, "away from the several designated headquarters." It has been held that all of the officials named in this paragraph may have their expenses paid when they are away from designated headquarters. Now, in the case of railway postal clerks, it is held that where they are away from designated headquarters means like where they were in attendance on trials in court. It has never been construed to mean when engaged in the regular routine work of the employees.

Mr. GOEBEL. Assuming that the gentleman is right, then was not there a failure to pay by reason of want of appropriation?

Mr. OVERSTREET. Not at all. The appropriation was to cover the expenses of the amount designated in this appropriation when they were away from their designated headquarters. The fact that there has never been a deficiency in this item since its origin, that there has always been, however small, some unexpended balance remaining, is evidence that they have not waited for a greater appropriation to meet expenses of the railway mail clerks while in the discharge of ordinary duties.

These clerks have to have a great deal of ability. I concede that. I am not underestimating their standing or their skill, but they are better paid in proportion to the character of their duties than any other one branch of the postal employees. We insure their lives to the extent of $1,000. We pay their regular salary when they are injured for a period of one year, and then in this item only the expenses when away from their designated headquarters are allowed. The addition of $2,000,000 would be of no more force than if you made it $40,000,000, because none of it could be used except for the same character of expense for which it thus far has been used, in the disbursement of that item of appropriation.

Mr. GOEBEL. That is the gentleman's construction.

Mr. OVERSTREET. Well, I have a little law to depend upon in addition to the Department's construction. Mr. Chairman, I ask for a vote upon the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio.

The question was taken, and on a division (demanded by Mr. GOEBEL) there were—ayes 13, noes 63.

So the amendment was rejected.

The Clerk read as follows:

For inland transportation of mail by electric and cable cars, $725,000: *Provided*, That the rate of compensation to be paid per mile shall not exceed the rate now paid to companies performing such service, except that the Postmaster-General, in cases where the quantity of mail is large and the number of exchange points numerous, may, in his discretion, authorize payment for closed-pouch service at a rate per mile not to exceed one-third above the rate per mile now paid for closed-pouch service; and for mail cars and apartments carrying the mails, not to exceed the rate of 1 cent per linear foot per car mile of travel: *Provided, further*, That the rates for electric-car service on routes over 20 miles in length outside of cities shall not exceed the rates paid for service on steam railroads: *Provided, however*, That not to exceed $30,000 of the amount hereby appropriated may be expended, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise.

Mr. WANGER. Mr. Chairman, I reserve a point of order as against the last proviso. What are the particular conditions under which the Postmaster-General is expected to expend not exceeding $30,000 of this appropriation?

Mr. OVERSTREET. Mr. Chairman, it was brought to the attention of this committee that there were a number of instances where, by reason of the general character of the service, the service could be performed really more cheaply by electric and cable car, although at a higher rate than the law allowed. For example, there was one case in New Jersey where there was an electric-car service going across country, and the company controlling it absolutely refused to carry the mail under the limitations of the law per linear foot, as provided by law. Therefore the mail is obliged to be carried partly by star route and partly by steam road, taking a much longer time than if the mail was carried across country on the electric car, and yet a contract can be entered into whereby the mail can be carried by the electric car even at a higher rate than the law prescribes, but really much more cheaply than by the other combined methods, and certainly to much greater benefit of the service.

Another instance was one brought to our attention from a point in Missouri. In that case there was an electric car line between two communities, I think but a few miles separated, and yet that car line refused to contract at the regular rates prescribed by statute, and the only way for the mail transportation between the two points was by star service. The contract for the star service was much higher than the electric road was quite willing to carry the mails for and at a much better advantage to the Government, although it would have been at a slightly increased price over the provisions of the current law.

Mr. RUCKER. Mr. Chairman, I want to ask the chairman of the committee a question. The case he speaks of, of Carrollton, Mo., I am quite familiar with. In that case is it not true that under existing law the highest rate that could be paid to the electric-car line was about $300, while as a matter of fact the Government has been forced to pay $750, because the electric car can not carry it at the price that could be paid.

Mr. OVERSTREET. The committee thought by the limited amount authorized, $30,000, where it could be used as the language of the provision states at less expense than the other service, even though at a little higher rate than the law authorizes, for the cable car and electric service, it was wise legislation.

Mr. WANGER. Mr. Chairman, I submitted the inquiry to the Second Assistant Postmaster-General as to the object of this proviso, and he gave an entirely different explanation from that given by my friend, the chairman of the committee. As I understand the position, it is this: This proposition is to pay every electric railway company that refuses to accept the rates provided by law such additional pay as it is willing to accept, providing it is less than the cost of the star service. Now, it seems to me that payment for electric-car service should be based upon some general legal provision, and not merely upon the desire of an electric railway company to get the service at a rate of pay to be fixed by itself. Nearly every new company is very anxious to get the contract, and the service is installed. The star contractor is put out of business. There is practically no longer any competition from star service, and then the electric railway company comes in with a new proposition above the rates allowed by law and is willing to continue carrying the mails if its judgment of the value of the service, viz, all it will stand, is accepted by the Post-Office Department and the compensation rated accordingly.

Mr. OVERSTREET. I understood the gentleman to say that he interrogated the Second Assistant Postmaster-General, and that he gave the gentleman from Pennsylvania an entirely different reason from what I have stated. I will say that the subcommittee in the preparation of the bill had before it Mr. Stewart, of the Second Assistant's office, and these are the reasons given by Mr. Stewart. Will the gentleman explain what the Second Assistant Postmaster-General said to him?

Mr. WANGER. Yes; with pleasure. The Second Assistant said the reason this appropriation was desired was that in some few instances the cost of delivery to post-offices within the 80-rod limit amounted almost to the total of compensation and deprived the electric railway company of reasonable compensation for carrying the mails.

Now, until we find in some way what the purpose of this appropriation is and the method of its expenditure, I feel it my duty to make the point of order, and I believe my friend will concede it is subject to it. I will withhold the point of order, however, for the present. If a proposition can be submitted to provide for the application of this money so that we understand what basis it is to be upon, and can approve of that basis, why, of course, I have no objection to its being made.

Mr. GARDNER of New Jersey. Mr. Chairman, I will submit a case. The city of Millville and the city of Bridgeton, in my district, lie less than 12 miles apart. The distance from Bridgeton down to Port Morris, passing on the way a third-class post-office of advanced grade, is 12 miles. The trolley carried the mails until a couple of years ago, more or less, when they refused to longer carry them for the rates of pay allowed steam railroads. The mail was taken off very readily, some gentleman believing, like our friend, perhaps, that it was only a strike of the company to get higher pay, and that they would take the mail back again. Two years, more or less, have gone by and they are still refusing to carry that mail. Now, the result is that the mails from Bridgeton to Millville, less than 12 miles distant, go from Bridgeton to Glassboro by rail and from Glassboro back to Millville by rail.

The mail to get from Bridgeton to Dividing Creek and Port Morris, covering a 24-mile route, goes by star route, and gets down to-day and may be answered to-morrow, whereas the trolley would deliver it very frequently. The result is that the people of important communities, not counting the small offices en route, are reduced to a daily mail, and this after once having been accustomed to frequent mail carried by trolley. So the mail facilities of a large section of the county—many thousands of people—have been greatly reduced. Port Morris, the oyster port, where more than 700 vessels harbor and trade, and the crews of those more than 700 vessels receive their mail there in season. It comes by star route or must be carried over Morris River. They had been accustomed to a splendid service by trolley.

Now, what about the cost? I interrogated the Department, like our friend, and they assure me that the cost of the present service, by star route, is very much greater than the price asked by the trolley company to resume carrying it.

And they did not take into that computation the cost of carrying the mail between Millville and Bridgeton, a roundabout way of 80 miles, more or less, of steam road. Putting the two together, the cost is doubtless trebled for the privilege of reducing the mail facilities of these important communities from a frequent to a daily service. That is a situation that this provision was specifically designed to meet.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WANGER. Mr. Chairman, I ask that the gentleman from New Jersey [Mr. GARDNER] have five minutes more.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. GARDNER of New Jersey. I want to call specific attention to the fact that the information which the gentleman got at the Department must have been misinformation, or else the cases are so few that there ought to be no hesitation in meeting them, because the entire appropriation to meet these exigencies provided in this bill is the sum of $30,000. It reads:

Provided, however, That not to exceed $30,000 of the amount hereby appropriated may be expended, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise.

Why anyone should desire to interpose a point of order against a provision that could not exceed $30,000 of expenditure and requires that the conditions must be unusual, that the service shall be more expeditious and more efficient, and at no greater cost I do not understand. If that is not good legislation, I would like my friend to point out what would be.

Mr. WANGER. Mr. Chairman, the case cited by my friend from New Jersey [Mr. GARDNER], I think, enforces my proposition that we should stand by the principle that the rate of compensation to electric railways for carrying the mail should be fixed by law upon equitable principles; and I think this Congress should go further and declare all steam and electric railways in the country post-roads, and force the carriage of mails whether the companies desire the service or not, and where they insist that the compensation is confiscatory, permit them to go into court to have it judicially determined what is a fair rate of compensation. In that way Congress will have light upon the subject. Take the case cited by the gentleman from New Jersey [Mr. GARDNER], which strongly appeals to me because of my fondness for oysters, and from the fact that the oyster supply is involved in the service in this case, suppose this company is granted this additional compensation, why is it done? Not because there is unusual expense to deliver mails to post-offices, but simply because the company is unwilling to accept the compensation which other companies receive and which the law specifies as the minimum. What else will this $30,000 do but pleasantly gratify the appetite of a very few companies and whet the appetites of many other electric railways now doing the service, so that the latter will refuse to accept the compensation which is now given and demand higher compensation therefor. Therefore I make the point of order against this proviso.

The CHAIRMAN (Mr. OLMSTED.) Will the gentleman state his point or order?

Mr. GAINES of Tennessee. If the gentleman will withhold his point of order for a moment, I will state that my recollection is, Mr. Chairman, and I call it to the distinguished gentleman's attention, that there is no law on the statute books which gives the Postmaster-General power to compel a railroad to haul the mail.

Mr. WANGER. I want a law put on the statute books.

Mr. GAINES of Tennessee. Postmaster-General Wilson, Postmaster-General Bissell, or Postmaster-General Wanamaker, one or other of these very great officers, called on Congress to give him the power to compel the railroads to take the mails, and yet we have never done it. The truth of the matter is that when the time comes to act the railroads are found to have been "running the country" in this matter. One or the other of these great officers said that he had no power to make the railroads haul the mail. In that connection, when this officer was appealed to to act, he said it was for Congress to give him power to compel. I say this is a calamitous condition, a horrible condition, Mr. Chairman, that this great officer here, Postmaster-General Meyer, I think a very competent officer, and his predecessors have not had the power to make the railroads haul the mail, and then let Congress and the courts settle the question as to whether or not the rate agreed on is a just and reasonable compensation. Let this power be given, but let us also pay a just rate; then no one is hurt.

Mr. WANGER. I agree with the gentleman that authority ought to be conferred.

Mr. RUCKER. I ask the gentleman to withhold his point of order for a moment. I want to say that when the time comes and the gentleman has perfected and secured the enactment into law of the ideal conditions he has just described, there would then probably be no need of legislation such as sought by this proviso. But let me say to the gentleman from Pennsylvania

the United States is spending millions—over a hundred million dollars annually—to give the people of the country proper mail facilities. In the community in which I live is a large town—one of the largest cities in my district—situated practically upon three railroads, the depots being separated by something like from half to three-quarters of a mile. At present the citizens of this town have to depend upon wagon service and star-route service to get the mails from the depots to the post-office. I say to the gentleman that much better and more efficient service can be had if the electric-car line there is permitted to compete for carrying the mail. Under existing law the total amount which the electric road can be paid for carrying the mail from the three stations to the city post-office, as I recollect it, is about $250 or $300, and yet every year the Government has been and is paying individuals about $750 for much poorer service, much less efficient service. All that I am asking, and I think all that is contemplated in this proviso, is that the people of Carrollton, Mo., and of other cities similarly situated, shall have the best service at the lowest price. I say to the gentleman that the electric railway at the city of Carrollton in Missouri would, in my opinion, gladly accept the contract for carrying the mail at $500 a year, and no mortal man can perform the service and earn living wages at a price less than $750. He can not do it, because he has to cross a creek and some lowlands, and sometimes encounters snowdrifts, storms, and high water, while the electric railway, operated on a good track, runs quickly and regularly to the stations and meets all trains carrying mail. I sincerely hope, in view of the fact that this proviso only authorizes a small appropriation—and let me say, by way of parentheses, there are only three or four places in the United States to which this particular provision would apply, one in New Jersey and one in my district——

Mr. WANGER. Two in my district.

Mr. RUCKER. Well, if it should apply to two cities in the gentleman's district, it would give the people better mail service and at a lower cost than is now secured. I therefore invoke and urge the gentleman, if he will, to withdraw the point of order.

Mr. WANGER. I make the point of order.

The CHAIRMAN. The gentleman from Pennsylvania will please state his point of order.

Mr. WANGER. The point of order is to the proviso beginning on line 11, page 22, which is new legislation and changes existing law. The rates of compensation by existing law are fixed. The only purpose of this proviso, as stated by the chairman of the committee, is to authorize the Postmaster-General to pay an additional sum in excess of what is provided by law, and therefore to that extent it changes the law.

Mr. GARDNER of New Jersey. I would like to make a suggestion on the point of order. The rate of pay is fixed, as the gentleman suggests, for the carrying of mail by railroads. This bill does not mean to provide for all railroad service in the ordinary sense of the term, or within the meaning of the law, that has fixed the rate for compensation to railroads for carrying the mail.

The CHAIRMAN. The Chair will ask the gentleman whether there is any law authorizing the service for which this $30,000 is provided.

Mr. GARDNER of New Jersey. I will put the question to the Chair in this form, in order to convey my meaning: Is there a law preventing it? There is a law authorizing the Department to contract for special-messenger service, or for star-route service, between Millville and Bridgeton. The law does authorize them to contract for special-messenger service, which would be expensive, or other service between Bridgeton and the post-offices named. The question is: Does that exclude a contract with a trolley company to become such messenger? I hold that it does not. But the trolley company will not become such special messenger at the rate of pay that is authorized to the railroads, and the Second Assistant Postmaster-General is in doubt about it.

Mr. WANGER. I should like to ask the gentleman whether the law does not limit the amount of payment to be made for transportation upon electric railways, specifically declaring that no more than so much shall be paid?

Mr. GARDNER of New Jersey. Within limited distances. What are they?

Mr. STAFFORD. If the Chair will indulge me, I wish to take the position that the point of order made by the gentleman from Pennsylvania can not be sustained, for the reason that in the other provisos in this paragraph there is distinct and substantive legislation other than that contained in existing law. The rates of pay, as stated in these various paragraphs, are the rates carried by the appropriation law and not by the statute, as found in Postal Laws and Regulations, in which there is a compilation of the statutes, on pages 548 to 550. As there are in this paragraph items that change existing law, under the rulings of the House it must be held that any item that is germane, even though it changes existing law, will be in order.

To make the statement more definite, under existing law, as provided by permanent law, the rate of compensation for carriage on electric-car lines is three-fourths of a cent per linear foot, while in this bill, and in former appropriation bills, the rate is and has been 1 cent per linear foot. That is distinct legislation. Therefore, the point of order being raised only to the last proviso and not to the preceding proviso, and it being germane, naturally the point of order must fail.

The CHAIRMAN. The Chair will ask the gentleman from Wisconsin if he concedes that standing by itself this would be out of order.

Mr. STAFFORD. I think standing by itself it would be clearly out of order; but there being these other provisions in the paragraph which change existing law, the remainder of the paragraph would also be out of order, but no point of order has been made against the other portions of the paragraph.

The CHAIRMAN. This does not seem to the Chair to stand on the same basis as an amendment, which, though it might by itself be out of order, yet might be offered to a paragraph in the bill which would have been subject to a point of order if the amendment were germane to such paragraph. This paragraph contains other parts which are pointed out as being subject to a point of order, but against which no point of order has been made. Now, the point of order being made against this proviso in the paragraph, the mere fact that a point of order is not made against the remainder of the paragraph does not, in the opinion of the Chair, make this paragraph in order.

Mr. STAFFORD. I understood the rule to be that it makes no difference whether an amendment is presented by the committee in the printed bill or whether it is offered on the floor of the House, provided the preceding paragraph was subject to a point of order and no point of order was made upon it; that in that case the proviso necessarily would be free from the point of order if it were presented.

The CHAIRMAN. It seems to the Chair that this proviso at any rate introduces a new change of existing law, a new substantive proposition, even if it were offered as an amendment; but being in the bill originally, and the point of order being made against it, the Chair feels that the point of order must be sustained.

Mr. RUCKER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. RUCKER. I understand the Chair sustains the point of order.

The CHAIRMAN. Yes.

Mr. RUCKER. Now, Mr. Chairman, I move, in line 11, page 22, to amend by adding, after the word "railroads," the words:

And that not to exceed $30,000 of the amount hereby appropriated may be expended, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise.

Mr. WANGER. I make a point of order against that.

Mr. RUCKER. This is an amendment proposed to a section which of itself was subject to a point of order, and as I caught the ruling of the Chair, that makes this amendment immune.

The CHAIRMAN. The Chair is of opinion that the proviso at the end of which this amendment is offered would itself have been subject to a point of order had the point been made. It has been allowed to remain by unanimous consent, and it might be perfected by any germane amendment, but this amendment is not upon the same subject and is not intended to perfect the preceding paragraph.

Mr. GARDNER of New Jersey. One moment, Mr. Chairman. The new legislation found in this paragraph is only the legislation that relates to the linear foot for service of electric cars:

That the rate for electric-car service on routes over 20 miles in length outside of cities shall not exceed the rate paid for service on steam railroads.

And the proviso is limited to a provision—a limitation or exception—that where unusual conditions exist, where the service will be more expeditious and efficient at no greater cost, $30,000 may be expended outside of the provisions of the preceding proviso just read. It is so germane, Mr. Chairman, that they would naturally be drawn in just that order, and, in fact, that needs no argument, for we have the illustration that they were drawn in that order and are correlated.

The CHAIRMAN. The Chair is of opinion that this amendment contains a new substantive proposition, offers new legis-

lation, and is within the rulings heretofore frequently made as changing existing law. The Chair sustains the point of order.

Mr. OVERSTREET. Mr. Chairman, I move to amend by inserting, after the word "railroad," in line 11, the following as a new paragraph:

The Clerk read as follows:

After line 11, page 22, add the following:
"To cover cost of service in inland transportation of mail by electric and cable cars, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise, $30,000.

Mr. WANGER. I make a point of order against that.

The CHAIRMAN. Does the gentleman from Pennsylvania make the point of order or reserve it?

Mr. OVERSTREET. Mr. Chairman, the gentleman from Pennsylvania suggests that, in line 9, page 22, we strike out the word "twenty" and insert the word "twenty-five," and then let the remaining language stand as printed in the bill. I am quite willing to accept that arrangement.

Mr. WANGER. It will be agreeable to me if the House will accept it.

Mr. OVERSTREET. The proposition is this, Mr. Chairman: The gentleman from Pennsylvania will withdraw the point of order against the proviso from line 11 to line 16 as printed in the bill and agree to an amendment in line 9 by striking out the word "twenty" and making it "twenty-five."

Mr. WANGER. I will move to amend by striking out in line 9 the word "twenty" and inserting the word "twenty-five," and in line 11, after the word "railroad," insert as follows:

Provided, however, That not to exceed $30,000 of the amount hereby appropriated may be expended, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise.

Mr. FINLEY. On that I reserve a point of order, Mr. Chairman.

Mr. MANN. I will reserve a point of order to that amendment. I would like to ask my friend from Pennsylvania whether his objection to the provision in the bill is that under the limitation of 20 miles it does not apply to cases which he thinks ought to be covered in his district. [Laughter.]

Mr. WANGER. That is one objection, I am frank to suggest.

Mr. MANN. Then I withdraw the point of order.

Mr. WANGER. That is the practical objection, and the other is theoretical.

The CHAIRMAN. Without objection the amendment offered by the gentleman from Indiana will be withdrawn. [After a pause.] The Chair hears no objection. The gentleman from Pennsylvania offers an amendment which the clerk will report.

The Clerk read as follows:

Page 22, line 9, strike out "twenty" and insert "twenty-five," and in line 11, after "railroads," insert the matter printed in the bill which reads:
"*Provided, however,* That not to exceed $30,000 of the amount hereby appropriated may be expended, in the discretion of the Postmaster-General, where unusual conditions exist or where such service will be more expeditious and efficient and at no greater cost than otherwise."

The CHAIRMAN. The question is on the amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

For transportation of foreign mails, $3,508,862: *Provided,* That the Postmaster-General shall be authorized to expend such sums as may be necessary, not exceeding $130,000, to cover one-half of the cost of transportation, compensation, and expenses of clerks to be employed in assorting and pouching mails in transit on steamships between the United States and other postal administrations in the International Postal Union, and not exceeding $40,000 for transferring the foreign mail from incoming steamships in New York Bay to the steamship and railway piers, and for transferring the foreign mail from incoming steamships in San Francisco Bay to the piers.

Mr. HOUSTON. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

On page 23, amend by adding at the end of line 4 these words:
"*Provided,* That no part of said sum shall be used to pay for the carrying in the mails any malt, vinous, or spirituous liquors, or intoxicating liquors of any kind, or cocaine or derivative thereof."

Mr. OVERSTREET. I wish to inquire if this is the same amendment that has heretofore been adopted.

Mr. HOUSTON. Yes; it is identical with the others.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee.

Mr. KÜSTERMANN. Mr. Chairman, I offer an amendment to the amendment—nor that any patent medicines or other compounds that contain more than 3 per cent alcohol shall be carried.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Add to the amendment:
"Nor any patent medicines or compounds containing more than 3 per cent alcohol."

Mr. CRUMPACKER. Mr. Chairman, I suggest to the gentleman that he add to the amendment a provision for the appointment of one expert chemist in every post-office in the United States. There is no other way of carrying out his amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin to the amendment of the gentleman from Tennessee.

The question was taken, and on a division (demanded by Mr. KÜSTERMANN) there were—ayes 16, noes 45.

So the amendment to the amendment was rejected.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Tennessee.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

For travel and miscellaneous expenses in the postal service, office of the Second Assistant Postmaster-General, $1,000.

Mr. STEENERSON. Mr. Chairman, before we pass from the subject of the transportation of mail, I ask the chairman of the committee to recur to page 16 for the purpose of offering an amendment that I forgot, inadvertently, to offer at that time.

The CHAIRMAN. The gentleman from Minnesota asks unanimous consent to return to page 16 for the purpose of offering an amendment. Is there objection?

Mr. FITZGERALD. Mr. Chairman, let the amendment be first reported.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word "served," in line 6, page 16, insert the word "entirely;" after the word "already," in line 9, page 16, insert the word "entirely."

The CHAIRMAN. Is there objection?

Mr. FITZGERALD. Mr. Chairman, reserving the right to object, what is the effect of this amendment?

Mr. STEENERSON. Mr. Chairman, I will explain it in a very few words. This action relates to star routes, and it provides as follows:

That no part of this appropriation shall be expended for continuance of any star-route service the patronage of which shall be served by the extension of rural-delivery service, nor shall any of said sum be expended for the establishment of new star-route service for a patronage which is already served by rural-delivery service.

I want to insert the word "entirely," and that will make it conform to the law as it now is. This bill omits the word "entirely." It should be inserted after the word "served," in the third line of the above paragraph, and also after the word "already," in sixth line. I will explain the necessity for it. Take it on the frontier, where there are sparsely settled communities, and they only have rural routes at some distances apart, and in some cases there is service only three times a week, and it is necessary to supplement one service with the other.

Mr. FITZGERALD. I have no objection.

Mr. DRISCOLL. I would like to ask the gentleman a question as to just what he means by "entirely."

Mr. STEENERSON. It liberalizes the provision. The amendment makes the law as it is now. This is the law as it was last year.

Mr. DRISCOLL. The rural carrier goes up and down the main roads through the country, and does not travel on the crossroads. Therefore the people living on the crossroads must come to the four corners and get their mail. Does the gentleman mean by his amendment that these crossroads must be served, in order that the territory may be entirely served by the rural carrier?

Mr. STEENERSON. It simply authorizes the service where one can supplement the other in some cases. The Postmaster-General does sometimes allow a star route where the rural service is insufficient, and this would leave it entirely the way it is, if there was any service at all. I hope, in the interest of the frontier and sparsely settled communities, that this matter will be left as it is in the present law—in the discretion of the Postmaster-General.

I have in mind a case in my district that affords a good illustration of the principle. Red Lake Falls is a town that has two lines of railway, and the morning mail arrives about 10 or 11 o'clock—too late to be taken by the rural carrier. From this town is a rural route to a post-office called Terrebonne, some 10 miles easterly. It goes out one way and back another, leaving a strip 2 or 3 miles wide between. Directly from Red Lake Falls to Terrebonne, through the center of this strip, is a daily star route, with boxes for patrons. This star route leaves after the mail comes in in the morning and returns the same day. It was proposed to discontinue this star route because Terrebonne was already served by rural route, but I contended that it was not within the meaning of the law "entirely" served, and the star-route service is still maintained.

Now, if we change the law, as the bill before us proposes to

do, by leaving out the word "entirely," this service will be discontinued as unauthorized. And this is only one of many cases in the sparsely settled sections where it is necessary to supplement one service with the other, and where this is done it is generally done for much less expense than rural service alone costs. In the thickly settled sections of the country, where there is country service that reaches every farmer's house, this question can not arise, for each one is entirely served; but in the more sparsely settled regions where you can not reach every farmhouse by rural carrier, it is sometimes necessary to plan and lay out a combination of rural and star routes. In such cases there may be a mile or two from the starting point or supply office traversed by both, but the greater part of the two routes would be over different roads and would reach different patrons. In such a case the Department should have the power to establish the service.

Mr. OVERSTREET. I have no objection.

The CHAIRMAN. Is there objection?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. STEENERSON].

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

For pay of agent and assistants to examine and distribute stamped and official envelopes and newspaper wrappers, and expenses of agency at Dayton, Ohio, including expenses attendant on inspection of manufacture of official envelopes at Cincinnati, Ohio, $25,000.

Mr. FITZGERALD. Mr. Chairman, I reserve a point of order on the paragraph. I notice there is considerable change in the language of this paragraph from that in the current law.

Mr. OVERSTREET. The gentleman refers to the paragraph at the bottom of page 23?

Mr. FITZGERALD. Yes.

Mr. OVERSTREET. That simply is occasioned by this condition, Mr. Chairman. Until very recently the contract for the manufacture of official envelopes, newspaper wrappers, and also for stamped envelopes and registry envelopes as well, was in one city, namely, Hartford, Conn. Under new contracts which have been made there are three different places where the contracts are now in force. The registry envelope manufactory contract is still in Hartford, Conn. The official envelopes are now under contract in Cincinnati, Ohio, and the stamped envelopes at Dayton, Ohio. The agency expense provided for here at Dayton, Ohio, the committee believes, will be sufficient to enable the agency at Dayton to supervise the contract for the manufacture of the official envelopes at Cincinnati as well. So that instead of duplicating agencies at Dayton and Cincinnati, which are less than 100 miles apart, and duplicating the expense, we have in this one paragraph provided by the appropriation of $25,000 to cover the expense of the agency at Dayton and the supervision by that agency of the manufacture of official envelopes in Cincinnati.

Mr. FITZGERALD. I withdraw the point of order.

The Clerk read as follows:

For payment of limited indemnity for the loss of pieces of first-class domestic registered matter, $25,000. That hereafter all moneys recovered or collected on account of loss of first-class domestic registered matter which in the course of adjustment are not restored to the original owners shall be deposited to the credit and for the purposes of said indemnity fund.

Mr. FITZGERALD. Mr. Chairman, I make the point of order against that portion of the paragraph commencing on line 8, "That hereafter all moneys, etc." to the end of the paragraph.

Mr. MANN. I would like to call the attention of the gentleman from Indiana [Mr. OVERSTREET] to the fact that I did not make the point of order.

Mr. OVERSTREET. I give the gentleman from Illinois [Mr. MANN] credit for not making the point of order, and I hope the gentleman from New York [Mr. FITZGERALD] will withdraw the point of order.

Mr. FITZGERALD. This provision creates a permanent, indefinite appropriation, and the less there is of them the better the service.

Mr. OVERSTREET. I do not question the fact that it is subject to a point of order, and if the gentleman is going to insist upon it I will not take the time to try to persuade him that it is wise legislation.

Mr. FITZGERALD. I understand the purpose of it; but I doubt if any explanation will make me withdraw the point of order. I will say to the gentleman from Indiana [Mr. OVERSTREET] that this creates a class of appropriations which the Committee on Appropriations is attempting to prevent and to repeal where they exist.

Mr. STAFFORD. Will the gentleman yield?

Mr. FITZGERALD. Yes; I will yield.

Mr. STAFFORD. As I understand the reason of the gentleman's objection, it is directed to that provision that creates a special fund to be set apart for this designated purpose. I understand that he has no objection to the principle that we seek to embody in this provision so as to pay all losers of registered packages the amount of a limited indemnity as soon as that liability can be acertained, rather than defer it until the post-office officials can recover the loss from the post-office clerk or other person who is guilty of the appropriation. So I ask whether the gentleman would have any objection to a provision like this: Strike out in lines 11 and 12 the words "to the credit and for the purposes of said indemnity fund," and insert in lieu thereof "in the Treasury of the United States," so as to read:

That hereafter all moneys recovered or collected on account of loss of first-class registered matter, which in the course of adjustment are not restored to the original owners, shall be deposited in the Treasury of the United States.

Mr. TAWNEY. I will say to the gentleman that that is entirely unnecessary. The Third Assistant Postmaster-General testified before the Committee on Appropriations at this session that these amounts recovered are paid into the Treasury to the credit of the general fund, as a part of the miscellaneous receipts of the Government.

Mr. STAFFORD. I would like to ask the gentleman from Minnesota who made that statement?

Mr. TAWNEY. The Third Assistant Postmaster-General.

Mr. STAFFORD. An officer of the Post-Office Department said before our committee that this indemnity that is paid to the person who loses registered packages was held back and not delivered over to the persons entitled to it until they had recovered the money from the persons liable for that depredation; and that in order to expedite the turning over of this fund it would be advisable to increase the appropriation and not hold back the allowance of money until it was obtained from the person who committed the depredation.

Mr. TAWNEY. And you have increased the amount from $5,000 to $25,000, and I think that is right. I do not believe that when the liability of the Government, or the actual damage by reason of the loss, has been ascertained, the party should be compelled to wait until the person who is responsible for that loss has made it good by repayment. For that reason you have increased the appropriation from $5,000 to $25,000 to enable the Department to make these payments just as soon as the fact of the loss has been established and the amount of the loss ascertained.

Mr. STAFFORD. Can the gentleman point out the section of the law which would authorize the transfer of this money into the Treasury?

Mr. TAWNEY. When before the Committee on Appropriations on the urgent deficiency bill, Mr. Lawshe was asked this question:

Q. When the indemnity is paid under your present system and the amount is collected, is that turned into the Treasury as miscellaneous receipts?—A. Yes.

Now, here is my suggestion; and he then goes on and advocates before the committee an increase of this appropriation to enable them to pay these losses without the delay incident to their collection of the amount lost from the person who was responsible for that loss.

Mr. STAFFORD. Under what authority?

Mr. TAWNEY. Under a general statute applying to all payments, whether for the sale of property or payment on account of Government service, it is turned into the Treasury unless otherwise provided and becomes a part of the general funds, as other miscellaneous receipts.

Mr. STAFFORD. It is not Government property.

Mr. TAWNEY. The Government is entitled to it, and they have recovered it, the same as a penalty.

Mr. STAFFORD. It belongs to a third party.

Mr. TAWNEY. The third party has been paid out of the Treasury of the United States.

Mr. STAFFORD. That does not justify a transfer of the property to the Government. Unless there is some substantive authority, I contend that some provision as suggested should be adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. OVERSTREET. The point of order is insisted on, and the gentleman from Illinois and the gentleman from Minnesota can get together and discuss the matter.

Mr. MANN. I do not think the point of order will be insisted on. Suppose there is a provision of law, as I believe, covering this question. What objection is there to putting into the post-office appropriation bill an item conforming with the law for the benefit of the post-office officials, many of whom,

along with other officials of the Government, do not know such a law is on the statute books. Why not let it go into the bill?

Mr. TAWNEY. As a matter of education?

Mr. MANN. As a matter of education. It simply provides that the money shall be paid, but it brings it to the attention of the officials who have not occasion to know the general provision of the law.

Mr. FITZGERALD. It is their duty to know the statute.

Mr. MANN. Even the gentleman from New York, who is one of the best-informed men of the House, does not know all the statutes of the United States.

Mr. FITZGERALD. If I were conducting a bureau of the Post-Office Department I would know all the law that applied to that bureau.

Mr. MANN. This item will not hurt anything if it is put in the bill. It provides the money shall be paid into the Treasury. It gives nothing from the funds belonging to the United States or the individual.

Mr. TAWNEY. I will say for the information of the gentleman from Illinois that the Department now insists that these losses, when recovered from the person who is responsible for the loss, belong to the Government if the person who has sustained the loss has been indemnified by payments out of this appropriation and the money is turned into the Treasury.

Mr. MANN. The gentleman read here an examination of a post-office official, who might answer the question of the gentleman; but the gentleman is so well informed that he knows a great many answers may be made by officials, which answers are not based on facts.

Mr. STAFFORD. I submit to the gentleman from Illinois that the statement——

Mr. MANN. What would it hurt to put it into the bill and tie it where it ought to be tied? Why should any official of the Post-Office Department be penalized, as they are, unless it has been returned to the person who lost the property?

Mr. OVERSTREET. Mr. Chairman, I should like to inquire if the gentleman from New York [Mr. FITZGERALD] has softened any toward this item or whether he still insists on his point of order?

Mr. FITZGERALD. I insist on the point of order.

Mr. OVERSTREET. I ask for a ruling.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For payment of limited indemnity for the loss of registered articles in the international mails, $10,000.

Mr. FITZGERALD. I reserve the point of order. I should like to have an explanation of this provision.

Mr. GAINES of West Virginia. What is the point of order?

Mr. FITZGERALD. That it is unauthorized by law.

Mr. OVERSTREET. Mr. Chairman, will the gentleman from New York please state what it is that he makes his point of order against?

Mr. FITZGERALD. Lines 13 and 14.

Mr. OVERSTREET. Mr. Chairman, for a number of years we have carried under the Second Assistant Postmaster-General an item of $5,000 for the payment of limited indemnity, for the loss of registered articles in the international mails. Upon request of the Postmaster-General, approved by both the Second and Third Assistant Postmasters-General, the item has been transferred to the bureau of the Third Assistant, as it appears in this bill. For a number of years, I do not know how long, not many——

Mr. FITZGERALD. It has been carried before?

Mr. OVERSTREET. Oh, yes; at $5,000. It is under the treaty arrangement with other countries, under the provisions of which we are liable for the loss of registered letters.

Mr. FITZGERALD. I withdraw the point of order.

The Clerk read as follows:

For the employment of special counsel to be appointed by the Attorney-General, when requested by the Postmaster-General, and at compensation to be fixed by the Attorney-General not exceeding this temporary appropriation, to prosecute and defend, on behalf of the Post-Office Department, all suits now pending or which may hereafter arise affecting the second-class mailing privilege, $10,000.

Mr. FITZGERALD. I reserve the point of order on that.

Mr. OVERSTREET. Mr. Chairman, in the year 1904 there was carried an item in the same language as this paragraph, except that the appropriation was $25,000 instead of $10,000. The money was used from year to year in the payment of attorneys and counsel fees in the defense and prosecution of cases arising out of and affecting second-class mail matter. I doubt if there has ever been appropriated an item that has been more economically and effectively expended than that item. From year to year the unexpended balance was reappropriated, until the present year, when it was all exhausted. There are yet a number of cases pending, and the aid of at least one attorney is needed in the office of the Third Assistant with reference to the prosecution of cases relating to second-class mail matter.

Mr. FITZGERALD. Is this language identical with the original?

Mr. OVERSTREET. Identical with the original, except that the original item carried $25,000 and this carries $10,000.

Mr. FITZGERALD. It is not in the appropriation act for the current year.

Mr. OVERSTREET. The appropriation for the current year was different from this, because it merely appropriated any unexpended balance.

Mr. FITZGERALD. I withdraw the point of order.

Mr. OVERSTREET. I move that the committee do now rise.

Mr. GAINES of Tennessee. Will the gentleman indulge me just a moment?

Mr. OVERSTREET. For what purpose?

Mr. GAINES of Tennessee. Just a minute is all I want.

Mr. OVERSTREET. I will withhold the motion for just a minute.

Mr. GAINES of Tennessee. Mr. Chairman, I said a little while ago that this "express trust" contract with the Government was "forty years old." Now I read from one of the official documents from the Appropriation Committee of last session—1908—Mr. Daskam, connected with the Department, in speaking about this contract, said:

It is quite a long contract and considered a very good one. It has been in existence for forty years. It commenced with the Adams and the United States express companies, got in here through the Baltimore and Ohio Railroad.

Then we advertised, and there were only two bids—from the United States and Adams express companies, and they were practically the same, so we did not change the contract.

Why practically the same? Because they are "practically" one and the "same," members of this "express trust," as John Moody, in his books, says they are.

The rates are just the same as they were forty years ago, and yet they are carrying, I dare say, tenfold more money for the Government of the United States than they were at the time the contract was made forty years ago. I say this is a reform that Congress ought to start at once; an evil that ought to be eliminated.

The last report of the Register of the Treasury, fiscal year 1907, shows that bonds are and can be sent by registered mail.

PACKAGES RECEIVED AND SENT.

During the year there were received by registered mail 2,498 packages containing bonds amounting to $26,378,651.47. There were sent from the office by registered mail 4,435 packages containing bonds of the aggregate value of $53,916,429.97.

During the year the Panama Canal loan ($30,000,000) was issued, and the transfers, etc., consequent upon that issue have since been regularly made, becoming a portion of the current work of the division. An additional issue of $1,000,000 in bonds of the city of Manila was made, and this was also added to and became regularly part of the current work. The work of refunding at various times, and the redeeming of the 4 per cent funded loan of 1907, were also added to the current work.

Why not extend this kind of service, and thus create a competitor for this "express trust" and save money to the public Treasury and the taxpayer?

The Treasurer in this same report says:

SHIPMENTS OF CURRENCY FROM WASHINGTON.

The business demands of the country and the growth in the volume of paper currency adds yearly to the work of this office. The increased labor and responsibility of the Treasury in Washington is illustrated by a comparative statement of the number and value of packages of currency shipped for the past two years.

The details follow:

	Fiscal year 1906.		Fiscal year 1907.	
	Number of packages.	Amount.	Number of packages.	Amount.
Total by express	68,787	$509,779,678	72,663	$570,552,811
Total by registered mail	15,390	978,197	17,320	1,214,026
Aggregate	84,177	510,757,875	89,983	571,776,867

Mr. OVERSTREET. I move that the committee do now rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. OLMSTED, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 18347, the post-office appropriation bill, and had come to no resolution thereon.

INVESTIGATION AS TO SUBMARINE BOATS.

Mr. BOUTELL. Mr. Speaker, I ask unanimous consent for the present consideration of the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That the select committee appointed pursuant to House resolution 288 is authorized to have such printing and binding done as may be necessary in the transaction of its business, and that all expenses necessary in securing the attendance of witnesses and in carrying on the investigation be paid out of the contingent fund of the House upon vouchers approved by the said committee.

The SPEAKER. Is there objection?

There was no objection.

The resolution was agreed to.

ENROLLED BILLS SIGNED.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the the same:

H. R. 14043. An act to provide for the extension of time within which homestead entrymen may establish their residence upon certain lands within the limits of the Huntley irrigation project, in the county of Yellowstone, in the State of Montana;

H. R. 16746. An act to authorize T. H. Friel or assigns to construct a dam across Mulberry Fork of the Black Warrior River;

H. R. 2915. An act for the relief of John P. Hunter;

H. R. 16749. An act to amend an act entitled "An act to authorize the construction of a bridge across the Monongahela River in the State of Pennsylvania by the Liberty Bridge Company, approved March 2, 1907;

H. R. 16073. An act to authorize the town of Edgecomb, Lincoln County, Me., to maintain a bridge across tide waters; and

H. R. 12803. An act allowing Chandler Bassett to perfect final proof in his homestead entry.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 2948. An act to provide additional station grounds and terminal facilities for the Arizona and California Railway Company in the Colorado River Indian Reservation, Ariz.; and

S. 1931. An act to grant certain land, part of the Fort Niobrara Military Reservation, Nebr., to the village of Valentine for a site for a reservoir or tank to hold water to supply the public of said village.

ADJOURNMENT.

Mr. OVERSTREET. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

Accordingly (at 5 o'clock and 5 minutes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Acting Secretary of the Treasury, transmitting a copy of a letter from the Attorney-General submitting an estimate of appropriation for the Reform School, District of Columbia—to the Committee on Appropriations and ordered to be printed.

A letter from the Acting Secretary of the Treasury, transmitting a copy of a letter from the Assistant Secretary of the Interior submitting an estimate of appropriation for carrying into effect certain schemes of timber operations—to the Committee on Appropriations and ordered to be printed.

A letter from the Acting Secretary of the Treasury, transmitting a copy of a letter from the Secretary of the Interior submitting an estimate of appropriation for public printing and binding for the Department of the Interior—to the Committee on Appropriations and ordered to be printed.

A letter from the Secretary of War, transmitting, with a letter from the Acting Chief of Engineers, report of examination of the Tennessee River from the head of Elk River Shoals to the Florence Railway bridge, in Alabama, and on plans of improvement—to the Committee on Rivers and Harbors and ordered to be printed with illustrations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. FOSS, from the Committee on Naval Affairs, to which was referred the bill of the House (H. R. 6289) to amend a certain provision of the act making appropriation for the naval service, approved June 29, 1906, reported the same with amendment, accompanied by a report (No. 1222), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. HUMPHREY of Washington, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 19089) to encourage private salmon hatcheries in Alaska, reported the same without amendment, accompanied by a report (No. 1223), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. FOSS, from the Committee on Naval Affairs, to which was referred the bill of the House (H. R. 17527) to equalize and fix the pay of the Navy and the Marine Corps, and for other purposes, reported the same without amendment, accompanied by a report (No. 1224), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. STEPHENS of Texas, from the Committee on Indian Affairs, to which was referred the bill of the House (H. R. 17301) to authorize the Secretary of the Interior to lease allotted or unallotted Indian lands for mining purposes, reported the same with amendment, accompanied by a report (No. 1225), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of bills of the following titles, which were thereupon referred as follows:

A bill (H. R. 15638) granting an increase of pension to Ben de Lemos—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 18837) granting an increase of pension to A. W. Kelley—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 10853) granting a pension to James A. Woodward—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 13340) to confirm an entry made by John J. Warley—Committee on Private Land Claims discharged, and referred to the Committee on the Public Lands.

A bill (H. R. 10175) granting an increase of pension to Elizabeth Presnell—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 10176) granting an increase of pension to Augusta J. Bush—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 19059) granting a pension to Herman Cramer—Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

A bill (H. R. 19057) granting a pension to Charles W. Barber—Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

A bill (H. R. 18094) granting an increase of pension to Jeremiah Sullivan—Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

A bill (H. R. 2615) for the relief of William W. Pardee—Committee on Military Affairs discharged, and referred to the Committee on War Claims.

A bill (H. R. 14688) for the relief of Thomas J. Ewing—Committee on Claims discharged, and referred to the Committee on War Claims.

A bill (H. R. 17134) for the relief of William S. Rote—Committee on Claims discharged, and referred to the Committee on War Claims.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. ESCH: A bill (H. R. 19159) to finally adjust the swamp-land grants to the State of Wisconsin, and for other purposes—to the Committee on the Public Lands.

Also, a bill (H. R. 19160) for purchase of a site for public building at Sparta, Wis.—to the Committee on Public Buildings and Grounds.

By Mr. OVERSTREET: A bill (H. R. 19161) authorizing the suspension of fees upon money orders in certain cases—to the Committee on the Post-Office and Post-Roads.

By Mr. GRIGGS: A bill (H. R. 19162) to establish 1-cent postage on rural routes—to the Committee on the Post-Office and Post-Roads.

By Mr. FULTON: A bill (H. R. 19163) to grant certain lands to the State of Oklahoma—to the Committee on the Public Lands.

By Mr. NEEDHAM: A bill (H. R. 19164) directing the Secretary of War to make an examination, survey, and estimate of cost of establishing a harbor on Monterey Bay, California—to the Committee on Rivers and Harbors.

By Mr. GAINES of West Virginia: A bill (H. R. 19165) for an addition to the post-office and custom-house building at Charleston, W. Va.—to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 19166) for the erection of a post-office and custom-house at Charleston, W. Va.—to the Committee on Public Buildings and Grounds.

By Mr. ALEXANDER of New York: A bill (H. R. 19167) to ratify a certain lease with the Seneca Nation of Indians—to the Committee on Indian Affairs.

By Mr. LAMAR of Missouri: A bill (H. R. 19168) to create in the Department of Agriculture a Bureau of Public Highways and to provide for national aid in the improvement of the public highways in the various States and Territories—to the Committee on Agriculture.

By Mr. GILLETT: A bill (H. R. 19169) to provide for holding terms of the United States circuit and district courts at Springfield, Mass.—to the Committee on the Judiciary.

By Mr. ROTHERMEL: A bill (H. R. 19170) for enlarging the Government building at Reading, Pa.—to the Committee on Public Buildings and Grounds.

By Mr. BRODHEAD (by request): A bill (H. R. 19171) granting pensions for soldiers who served ninety or more days in the Philippines and were honorably discharged for disability—to the Committee on Pensions.

By Mr. DRISCOLL: A bill (H. R. 19172) for relief of former members of New York Infantry Volunteers—to the Committee on Military Affairs.

By Mr. LAMB: A bill (H. R. 19173) authorizing the acceptance of a site and providing for the construction and maintenance thereon of a temporary building for post-office purposes during the erection and completion of the new post-office building at Richmond, Va.—to the Committee on Public Buildings and Grounds.

By Mr. RICHARDSON: A bill (H. R. 19174) to authorize the Secretary of the Treasury to sell a certain strip of land in Florence, Ala., to the Benevolent Protective Order of Elks, Florence, Ala.—to the Committee on Public Buildings and Grounds.

By Mr. KAHN: A bill (H. R. 19175) to provide for the regulation of foreign corporations in the District of Columbia, and for other purposes—to the Committee on the District of Columbia.

By Mr. STEPHENS of Texas: A bill (H. R. 19176) to provide for the sale of the remnant of certain Indian pasture and wood reserve lands in Oklahoma, and for other purposes—to the Committee on Indian Affairs.

By Mr. CARTER: A bill (H. R. 19177) removing restrictions from certain lands in Oklahoma—to the Committee on Indian Affairs.

By Mr. BURTON of Delaware: A bill (H. R. 19238) to amend chapter 2939 of the acts of Congress passed in the Fifty-ninth Congress and approved March 4, 1907, entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon"—to the Committee on Interstate and Foreign Commerce.

By Mr. MANN: Resolution (H. Res. 298) for the payment of a janitor in the press room in the House Office Building—to the Committee on Accounts.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. ALLEN: A bill (H. R. 19178) granting an increase of pension to John A. Potter—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19179) granting an increase of pension to William F. Bradbury—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19180) granting an increase of pension to William H. Manchester—to the Committee on Invalid Pensions.

By Mr. ANSBERRY: A bill (H. R. 19181) granting a pension to Nancy A. Dressor—to the Committee on Invalid Pensions.

By Mr. ANTHONY: A bill (H. R. 19182) for the relief of Annie Halderman, legal representative of George P. Dorriss, deceased—to the Committee on War Claims.

By Mr. ASHBROOK: A bill (H. R. 19183) granting an increase of pension to John M. Stocking—to the Committee on Invalid Pensions.

By Mr. BARCHFELD: A bill (H. R. 19184) granting an increase of pension to William A. Tyler—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19185) granting an increase of pension to John Jamieson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19186) granting an increase of pension to T. Clark Stockdill—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19187) granting an increase of pension to Harris Hoover—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19188) granting an increase of pension to William H. Bender—to the Committee o nPensions.

By Mr. BATES: A bill (H. R. 19189) providing for the recognition of the military service of the officers and enlisted men of McLane's Erie Regiment, Pennsylvania Volunteer Infantry, who served in the civil war—to the Committee on Military Affairs.

By Mr. BENNET of New York: A bill (H. R. 19190) granting an increase of pension to M. Lewis Blair—to the Committee on Invalid Pensions.

By Mr. BOOHER: A bill (H. R. 19191) granting a pension to Caroline Gregg—to the Committee on Invalid Pensions.

By Mr. BONYNGE: A bill (H. R. 19192) granting an increase of pension to George M. Harris—to the Committee on Invalid Pensions.

By Mr. BRUMM: A bill (H. R. 19193) granting an increase of pension to Joseph Johnston—to the Committee on Invalid Pensions.

By Mr. BURTON of Delaware: A bill (H. R. 19194) granting a pension to Julia A. Jester—to the Committee on Invalid Pensions.

By Mr. CALDER: A bill (H. R. 19195) for the relief of the heirs of Louis Tredenick—to the Committee on Claims.

By Mr. CARTER: A bill (H. R. 19196) conferring jurisdiction on the Court of Claims to adjudicate the rights of persons who formerly held town lots in the city of Sulphur, in the Chickasaw Nation, Ind. T., which have been taken for a United States reservation, and for other purposes—to the Committee on Indian Affairs.

By Mr. COX of Indiana: A bill (H. R. 19197) granting a pension to George Heishman—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19198) granting an increase of pension to Henry Robinson—to the Committee on Invalid Pensions.

By Mr. DALZELL: A bill (H. R. 19199) for the relief of the Philadelphia Company, of Pittsburg, Pa.—to the Committee on Claims.

By Mr. DAVENPORT: A bill (H. R. 19200) granting a pension to M. M. Gilbreath—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19201) granting a pension to James Green—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19202) authorizing the Department of Justice to convey to the county of Craig, in the State of Oklahoma, the United States jail situated in the city of Vinita, in said county—to the Committee on the Judiciary.

By Mr. DAWSON: A bill (H. R. 19203) granting a pension to Michael McInery—to the Committee on Pensions.

By Mr. DENVER: A bill (H. R. 19204) granting an increase of pension to John Carnahan—to the Committee on Invalid Pensions.

By Mr. DRISCOLL: A bill (H. R. 19205) granting an increase of pension to Daniel Beeman—to the Committee on Invalid Pensions.

By Mr. FLOOD: A bill (H. R. 19206) granting a pension to Walter English—to the Committee on Pensions.

By Mr. FOSS: A bill (H. R. 19207) for the relief of Lewis Poessel—to the Committee on Naval Affairs.

By Mr. FOULKROD: A bill (H. R. 19208) granting an increase of pension to Charles Stackhouse—to the Committee on Invalid Pensions.

By Mr. FULLER: A bill (H. R. 19209) granting an increase of pension to Charles Walley—to the Committee on Invalid Pensions.

By Mr. GAINES of West Virginia: A bill (H. R. 19210) granting an increase of pension to William A. Cotrell—to the Committee on Invalid Pensions.

By Mr. GILHAMS: A bill (H. R. 19211) granting an increase of pension to Harrison Shobe—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19212) granting an increase of pension to Vesta M. Swarts—to the Committee on Invalid Pensions.

By Mr. HARDING: A bill (H. R. 19213) granting an increase of pension to Jennie D. Bigelow—to the Committee on Invalid Pensions.

By Mr. JOHNSON of Kentucky: A bill (H. R. 19214) for the relief of Ann Eliza Miles—to the Committee on War Claims.

Also, a bill (H. R. 19215) granting an increase of pension to Willis G. Craddock—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19216) to correct the military record of Charles H. French—to the Committee on Military Affairs.

Also, a bill (H. R. 19217) to correct the military record of Robert Thompson—to the Committee on Military Affairs.

By Mr. LANGLEY: A bill (H. R. 19218) to correct the military record of Andrew Napier—to the Committee on Military Affairs.

By Mr. LAW: A bill (H. R. 19219) for the relief of Charles Wauters—to the Committee on Naval Affairs.

By Mr. McCALL: A bill (H. R. 19220) granting an increase of pension to Walter Katon—to the Committee on Invalid Pensions.

By Mr. MOON of Pennsylvania: A bill (H. R. 19221) granting a pension to Thomas A. Downs—to the Committee on Invalid Pensions.

By Mr. MUDD: A bill (H. R. 19222) granting a pension to Henry A. Dahle—to the Committee on Invalid Pensions.

By Mr. PAYNE: A bill (H. R. 19223) granting an increase of pension to James B. Hart—to the Committee on Invalid Pensions.

By Mr. PEARRE: A bill (H. R. 19224) granting an increase of pension to Alfred G. Sturgiss—to the Committee on Invalid Pensions.

By Mr. PORTER: A bill (H. R. 19225) granting an increase of pension to Simeon Stuart—to the Committee on Invalid Pensions.

By Mr. SHERWOOD: A bill (H. R. 19226) granting an increase of pension to Mary I. White—to the Committee on Invalid Pensions.

By Mr. STURGISS: A bill (H. R. 19227) granting an increase of pension to Leonard Wile—to the Committee on Invalid Pensions.

By Mr. TAWNEY: A bill (H. R. 19228) granting a pension to Virginia Whytock—to the Committee on Invalid Pensions.

By Mr. THOMAS of Ohio: A bill (H. R. 19229) granting an increase of pension to Henry E. Hill—to the Committee on Invalid Pensions.

By Mr. WEEKS: A bill (H. R. 19230) granting a pension to Benjamin F. Lawrence—to the Committee on Invalid Pensions.

By Mr. WEISSE: A bill (H. R. 19231) granting an increase of pension to George H. Daubner—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19232) granting an increase of pension to Emma C. Wiese—to the Committee on Pensions.

Also, a bill (H. R. 19233) granting an increase of pension to August Kluener—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19234) granting an increase of pension to Jacob Zimmermann—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19235) granting an increase of pension to Valentine Schwartz—to the Committee on Invalid Pensions.

By Mr. SPARKMAN: A bill (H. R. 19236) granting an increase of pension to Antoinette A. Darnell—to the Committee on Pensions.

By Mr. STURGISS: A bill (H. R. 19237) granting an increase of pension to Joseph W. Sturgiss—to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. AMES: Petition of members of the Bartlett School, of Lowell, Mass., for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. ANSBERRY: Petition of Warren Electric Specialty Company, for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. BANNON: Petition of First Presbyterian Church of Jackson, Ohio, for Littlefield original-package bill—to the Committee on the Judiciary.

By Mr. BARTLETT of Georgia: Petition of Augusta Exchange and Board of Trade, for H. R. 14934 (act regulating commerce)—to the Committee on Interstate and Foreign Commerce.

By Mr. BENNET of New York: Paper to accompany bill for relief of Lewis Blair—to the Committee on Invalid Pensions.

By Mr. BONYNGE: Paper to accompany bill for relief of William W. Pardee (previously referred to the Committee on Military Affairs)—to the Committee on War Claims.

By Mr. BRADLEY: Petition of Division No. 292, Brotherhood of Locomotive Engineers, of Middletown, N. Y., for S. 4260—to the Committee on Interstate and Foreign Commerce.

Also, petition of Division No. 292, Brotherhood of Locomotive Engineers, of Middletown, N. Y., for H. R. 17036 and S. 5307 (liability bill)—to the Committee on the Judiciary.

Also, petition of Division No. 292, Brotherhood of Locomotive Engineers, of Middletown, N. Y., for H. R. 17137 (Rodenberg anti-injunction bill)—to the Committee on the Judiciary.

By Mr. BURKE: Petition of Miss Mathews, of Mercer Sanitarium, against sale of intoxicants on all Government property—to the Committee on Alcoholic Liquor Traffic.

Also, petition of Bollinger Brothers, of Pittsburg, Pa., for H. R. 428 (national automobile license)—to the Committee on Interstate and Foreign Commerce.

By Mr. BURNETT: Papers to accompany bills for relief of Emil B. Hauk, Mrs. Malinda Faust, and William Burkart—to the Committee on Pensions.

By Mr. CALDWELL: Petition of United Mine Workers of America, Local Union No. 694, of Gerard, Ill., against the Penrose amendment—to the Committee on the Post-Office and Post-Roads.

By Mr. COOPER of Wisconsin: Petitions of A. D. Hamilton Post, No. 60, Grand Army of the Republic, of Milton, Wis., and R. B. Hayes Post, No. 76, Grand Army of the Republic, against proposed abolition of United States pension agencies—to the Committee on Appropriations.

By Mr. DALZELL: Petition of sundry citizens of Thirtieth Congressional District of Pennsylvania, against Penrose amendment—to the Committee on the Post-Office and Post-Roads.

Also, petition of sundry citizens of Thirtieth Congressional District of Pennsylvania, against sale of intoxicants, etc.—to the Committee on Alcoholic Liquor Traffic.

Also, petition of National Association of Clothiers, against Aldrich currency bill—to the Committee on Banking and Currency.

By Mr. DAVIS of Minnesota: Petition of city council of Stillwater, Minn., for improvement of the upper Mississippi—to the Committee on Rivers and Harbors.

Also, petition of Vermont Schoolmasters' Club, for H. R. 18204 (agricultural instruction in high schools)—to the Committee on Agriculture.

By Mr. DAWSON: Petition of Andrew Carnegie and other citizens of New York, against extravagance in naval construction—to the Committee on Naval Affairs.

Also, paper to accompany bill for relief of James B. Walsh—to the Committee on Invalid Pensions.

By Mr. DRISCOLL: Petition of United Garment Workers of America, Local No. 143, of Syracuse, N. Y., for battle-ship construction in navy-yards—to the Committee on Naval Affairs.

By Mr. DUNWELL: Petition of Calvary Church, of New York, for the Kittredge and Barchfeld copyright bill—to the Committee on Patents.

Also, petition of A. H. De Haven, against the Hepburn bill—to the Committee on Interstate and Foreign Commerce.

By Mr. ELLIS of Oregon: Petition of C. C. Brix and 42 others of Crook County, Oreg., against Penrose amendment—to the Committee on the Post-Office and Post-Roads.

By Mr. ESCH: Petition of Wisconsin Retail Lumber Dealers' Association, against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. FOCHT: Petition of citizens of Juniata County and citizens of Franklin County, Pa., for S. 3152 (protection to dairy interests)—to the Committee on Agriculture.

By Mr. FORNES: Petition of Sons of American Revolution, for H. R. 19082 (print records of the Revolution)—to the Committee on Printing.

Also, petition of United Mine Workers of America, for the McHenry bill providing for a bureau of mines—to the Committee on Mines and Mining.

By Mr. FULLER: Petition of Burr Brothers, of Rockford, Ill., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

Also, petition of United Mine Workers of America, for McHenry bill (bureau of mines)—to the Committee on Mines and Mining.

Also, paper to accompany bill for relief of Charles Walley—to the Committee on Invalid Pensions.

By Mr. GARDNER of New Jersey: Petition of granges of Second Congressional District, for national highway commission—to the Committee on Agriculture.

By Mr. GRAHAM: Petition of Bollinger Brothers, of Pittsburg Pa., urging support of H. R. 428 (national automobile license)—to the Committee on Interstate and Foreign Commerce.

By Mr. GOEBEL: Petition of Walnut Hills Business Club, against noncompetitive feature of the Crumpacker Thirteenth Census clerical-force bill—to the Committee on the Census.

Also, petition of Advertisers' Club of Cincinnati, Ohio, for H. R. 14386, against advertisements pernicious and misleading—to the Committee on the District of Columbia.

By Mr. GOULDEN: Petition of Appomattox Post, No. 50, Grand Army of the Republic, Department of California and Nevada, for H. R. 220, against desecration, mutilation, and improper use of the United States flag—to the Committee on the Judiciary.

Also, petition of Piano, Organ, and Musical Instrument Workers' Union, No. 16, of New York, for battle-ship building in navy-yards—to the Committee on Naval Affairs.

Also, petition of Sons of the Revolution, of New York, for H. R. 19082 (preservation of certain records of the Revolution)—to the Committee on Printing.

Also, petition of Amalgamated Sheet Metal Workers, Local Union No. 11, New York, for building a battle ship in Brooklyn navy-yard—to the Committee on Naval Affairs.

By Mr. GRANGER: Petition of representative council of Newport, R. I., favoring estimates in fortifications bill applicable to the fort of Narragansett—to the Committee on Military Affairs.

Also, petition of representative council of Newport, R. I., for appropriation for naval training station at Newport, R. I.—to the Committee on Naval Affairs.

Also, petition of representative council of Newport, R. I., for building next battle ship at one of the navy-yards—to the Committee on Naval Affairs.

Also, petition of William P. Metcalf and other citizens of New Mexico, against S. 1518 (Penrose amendment, etc.)—to the Committee on the Post-Office and Post-Roads.

By Mr. HARDWICK: Petition of president of Exchange and Board of Trade of Augusta, Ga., for H. R. 14934—to the Committee on Interstate and Foreign Commerce.

Also, petition of State board of entomology of Georgia, for franking privilege for the board—to the Committee on the Post-Office and Post-Roads.

By Mr. HAYES: Petition of American Institute of Architects, for uniform plan for improvement of Washington—to the Committee on the District of Columbia.

By Mr. JOHNSON of South Carolina: Paper to accompany bill for relief of Mrs. L. C. Woodruff—to the Committee on Claims.

By Mr. KELIHER: Petition of common council of Boston, for battle-ship building at the Charlestown Navy-Yard—to the Committee on Naval Affairs.

By Mr. KNAPP: Petition of North Scriba and Dexter granges, and White Face Grange, of Jay, all in the State of New York, for Federal assistance in building highways—to the Committee on Agriculture.

By Mr. LANGLEY: Papers to accompany bills for relief of E. W. McCormick and Adam Baum—to the Committee on War Claims.

By Mr. LINDBERGH: Petition of citizens of Belgrade, Minn., for extension of parcels post—to the Committee on the Post-Office and Post-Roads.

By Mr. MALBY: Petitions of Woman's Christian Temperance Union of Flackville, N. Y.; George C. Thayer, Charles Tracy, S. J. Young, and Archie Scott, of Lisbon, against sale of intoxicants on Government property—to the Committee on Alcoholic Liquor Traffic.

By Mr. MILLER: Petition of citizens of Tebo, Kans., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Peabody, Kans., for the Sherwood pension bill—to the Committee on Invalid Pensions.

By Mr. NEEDHAM: Petition of citizens of California, against restoration of Army canteen—to the Committee on Military Affairs.

By Mr. NYE: Petition of J. B. Wakefield, of Minneapolis, Minn., against abolition of pension agencies—to the Committee on Pensions.

By Mr. O'CONNELL: Petition of Massachusetts State Board of Trade, for condemnation of land to form approach to eastern breakwater at Point Judith—to the Committee on Rivers and Harbors.

Also, petition of American Association of Masters, Mates, and Pilots, against H. R. 4771—to the Committee on the Merchant Marine and Fisheries.

Also, petition of United Mine Workers of America, against action of Judge Dayton—to the Committee on the Judiciary.

Also, petition of common council of city of Boston, for battleship building at the Charlestown Navy-Yard—to the Committee on Naval Affairs.

By Mr. POLLARD: Petition of Omaha Clearing House Association, against legislation inimical to dealing in futures in grain—to the Committee on Interstate and Foreign Commerce.

By Mr. RICHARDSON. Papers to accompany bill to authorize the Secretary of the Treasury to sell a certain strip of land in Florence, Ala., to the Benevolent Protective Order of Elks, at Florence, Ala.—to the Committee on Public Buildings and Grounds.

By Mr. RIORDAN: Petition of memorial and executive committee of Grand Army of the Republic of the city of Buffalo, N. Y., against consolidation of pension agencies—to the Committee on Appropriations.

Also, petition of Iowa State Bankers' Association, against Aldrich currency bill—to the Committee on Banking and Currency.

By Mr. RYAN: Petition of Maynet Lodge, No. 227, of Binghamton, N. Y., for La Follette employers' liability bill and the Clapp free-pass amendment—to the Committee on the Judiciary.

Also, petition of Traders and Merchants' Association of Baltimore, against the Aldrich and for the Fowler bill—to the Committee on Banking and Currency.

Also, petition of Local Union No. 11, A. S. M. W. T. A., of New York for battle-ship building in navy-yards—to the Committee on Naval Affairs.

Also, petition of publishers of directories of the United States, for the Kittredge copyright bill—to the Committee on Patents.

By Mr. SMITH of Missouri: Petitions of citizen voters of Jefferson County, Mo., and citizens of Wayne County, Mo., against the Penrose amendment—to the Committee on the Post-Office and Post-Roads.

By Mr. STEPHENS of Texas: Petition of citizens of Nosona, Tex., against Penrose amendment—to the Committee on the Post-Office and Post-Roads.

By Mr. STURGISS: Paper to accompany bill for relief of James Irwin, alias James Williamson (previously referred to the Committee on Invalid Pensions)—to the Committee on Military Affairs.

Also, paper to accompany bill for relief of Leonard Wiles—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Joseph W. Sturgiss—to the Committee on Invalid Pensions.

By Mr. SULZER: Petition of memorial and executive committee of Grand Army of the Republic, Department of New York, against consolidation of pension agencies—to the Committee on Appropriations.

Also, petition of L. Frank Miller, for the Kittredge copyright law—to the Committee on Patents.

Also, petition of Poole & Brown, for H. R. 14047, for a United States court of patent appeals—to the Committee on Patents.

By Mr. THOMAS of Ohio: Petition of Beame Smith and other citizens of Summit, Ohio, against the Penrose amendment—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Niles, Ohio, for building of battle ships in navy-yards—to the Committee on Naval Affairs.

By Mr. WANGER: Petition of Lodge No. 511, Brotherhood of Railway Trainmen, of Philadelphia, Pa., for S. 4260—to the Committee on Interstate and Foreign Commerce.

By Mr. WEEKS: Petition of Local No. 263, International Union of Steam Engineers, of Boston, Mass., for building battle ships at navy-yards—to the Committee on Naval Affairs.

By Mr. WEISSE: Petition of United Mine Workers of America, for McHenry bill for a bureau of mines—to the Committee on Mines and Mining.

Also, petition of United Mine Workers of America, against decision of Judge Dayton—to the Committee on the Judiciary.

Also, petition of Wisconsin Consumers' League, for the Beveridge-Parsons child-labor bill—to the Committee on Labor.

By Mr. WANGER: Memorial of 500 representative citizens of New Hope, Pa., on evening of anniversary of Washington's Birthday, favoring (1) general treaties of arbitration being negotiated by the United States granting jurisdiction to the international court at The Hague over as many classes of controversies as the other contracting power in each case can be induced to transfer thereto; (2) of a permanent international congress, to assemble periodically and automatically, for the purpose of suggesting changes in the law of nations and of its administration as the current of events may make desirable and practicable; (3) the immediate adoption of a progressive naval programme that will give the nation a navy capable of protecting our vast seacoast and other interests and our possessions and of executing our just foreign policies—to the Committee on Naval Affairs.